

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

December 20, 2016, at 3:00 p.m.

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1. [12-21207-E-13](#) **JIM LEDESMA** **MOTION FOR CONSENT TO ENTER**
PGM-4 **Peter Macaluso** **INTO LOAN MODIFICATION**
 AGREEMENT
 11-21-16 [200]

Final Ruling: No appearance at the December 20, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 21, 2016. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

The Motion to Approve Loan Modification 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 Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by Jim Ledesma (“Debtor”) seeks court approval for Debtor to incur post-petition credit. Capital One, N.A. (“Creditor”), whose claim the Plan provides for in Class 1, has agreed to a loan modification that will reduce Debtor’s mortgage payment (including impounds) to \$933.87 per month. The modification will capitalize the pre-petition arrears and provide for stepped increases in the interest rate from 3.625% in years 1–5 to 3.750% in years 6–40.

TRUSTEE’S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on December 5, 2016. Dckt. 209. The Trustee does not oppose the Motion.

DISCUSSION

The Motion is supported by the Declaration of Jim Ledesma. Dckt. 202. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms.

This post-petition financing is consistent with the Chapter 13 Plan in this case and with Debtor's ability to fund that Plan. There being no objection from the Trustee or other parties in interest, and the Motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification 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 Approve Loan Modification filed by Jim Ledesma 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 court authorizes Jim Ledesma ("Debtor") to amend the terms of the loan with Capital One, N.A. ("Creditor"), which is secured by the real property commonly known as 10284 Coloma Road, Rancho Cordova, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion (Dckt. 203).

Final Ruling: No appearance at the December 20, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 10, 2016. By the court's calculation, 40 days' notice was provided. 42 days' notice is required.

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor has filed evidence in support of confirmation. David Cusick, the Chapter 13 Trustee, filed a statement of non-opposition on December 6, 2016. Dckt. 154. 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 Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on November 15, 2016, is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on December 8, 2016. Dckt. 13. The Trustee asserts that Debtor's filing is incomplete again, and the Trustee is unable to determine if Debtor's circumstances have sufficiently changed.

DISCUSSION

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if one or more of Debtor's cases were pending within the year preceding filing of the instant case. *Id.* § 362(c)(3)(C)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209–10 (2008). Courts consider many factors—including those used to determine good faith under §§ 1307(c) and 1325(a)—but the two basic issues to determine good faith under § 362(c)(3) are:

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

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

A review of the docket shows that a Notice of Incomplete Filing and Notice of Intent to Dismiss Case if Documents Are Not Timely Filed was issued on December 7, 2016. Dckt. 12. Debtor has not submitted:

- A. Attorney's Disclosure Statement,
- B. Chapter 13 Plan,
- C. Form 122C-1 Statement of Monthly Income,
- D. Schedules A through J,
- E. Statement of Financial Affairs, and
- F. Summary of Assets and Liabilities.

The Debtor has not sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay. Debtor has asserted that documents will be filed in this case, but Debtor has once again failed to file the necessary documents.

The court notes that in the prior case was represented by an attorney who regularly appears in this court. In that case, counsel requested an extension of time to file the basic, necessary documents. Though granted in that case, Debtor could not file the documents.

In this case, through Debtor testifies in her declaration that she sent the information back in October to her prior counsel, no explanation was provided as to why there is nothing that has been filed in this case. Other than not filing the documents in the prior case and then not filing them in this case, no reason for this inability is given.

The Motion is denied and the court does not extend the automatic stay, which is **terminated as to the Debtor** by operation of law pursuant to 11 U.S.C. § 362(c)(3)(B). FN.1.

FN.1. As this court has noted in other cases, Congress expressly provides in 11 U.S.C. § 362(c)(3)(A) that the automatic stay **terminates as to the Debtor**, and nothing more. In 11 U.S.C. § 3622(c)(4) Congress expressly provides that the automatic stay **never goes into effect in the bankruptcy case** when the conditions of that section are met. Congress clearly knows the difference between a debtor, the bankruptcy estate (for which there are separate express provisions under 11 U.S.C. § 362(a) to protect property of the bankruptcy estate) and the bankruptcy case. While terminated as to the Debtor, the plain language of 11 U.S.C. § 362(c)(3) is limited to the automatic stay as to only the Debtor.

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

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

The Motion to Extend the Automatic Stay filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied and the automatic stay, which terminates as to the Debtor pursuant to 11 U.S.C. § 362(c)(3)(A), is not extended.

4. [16-24712-E-13](#) **MITCHELL/CANDICE**
BLG-2 **SITTINGER**
 Chad Johnson

MOTION TO SELL
11-21-16 [50]

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

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

Correct 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 November 21, 2016. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

The Motion to Sell Property 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 Sell Property is granted.

The Bankruptcy Code permits the Chapter 13 Debtor (“Movant”) to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the real property commonly known as 913 Pearwood Court, Vacaville, California (“Property”).

The proposed purchaser of the Property is Daniel Huerta, and the terms of the sale are:

- A. Purchase price of \$409,000.00.
- B. Realtor commission of \$20,450.00 for selling and listing agents (5% commissions).
- C. \$282,085.20 paid to Wells Fargo Bank, N.A. on its first deed of trust.
- D. \$24,088.98 paid to Wells Fargo Bank, N.A. on its second deed of trust.
- E. \$3,258.18 paid in 2016–17 property taxes.
- F. \$7,211.08 paid to Citibank, N.A. on its abstract of judgment.
- G. Net to Movant of \$71,906.56.

TRUSTEE’S LIMITED OBJECTION

David Cusick, the Chapter 13 Trustee, filed a Limited Objection on December 6, 2016. Dckt. 58. The Trustee does not oppose the Motion, but he notes that Debtor is proposing to amend the Plan after the non-governmental bar date has passed (November 30, 2016).

The Trustee notes that the Internal Revenue Service filed a claim for \$15,476.66, and he believes that the sale will generate sufficient funds to complete the Plan.

DISCUSSION

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because it fully pays claims in this case and generates a benefit for Movant.

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 Sell Property filed by Mitchell Sittinger and Candice Sittinger, the Chapter 13 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 Mitchell Sittinger and Candice Sittinger, the Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Daniel Huerta or nominee (“Buyer”), the Property commonly known as 913 Pearwood Court, Vacaville, California (“Property”), on the following terms:

1. The Property shall be sold to Buyer for \$409,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 52, and as further provided in this Order.
2. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.
3. The Chapter 13 Debtor be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.
4. The Chapter 13 Debtor be and hereby is authorized to pay a real estate broker’s commission in an amount equal to five percent (5%) of the actual

purchase price upon consummation of the sale. The five percent (5%) commission shall be paid to the Chapter 13 Debtor's broker, Kelly Nusbaum of Stumbaugh Realty Advisors, and to Purchaser's broker, Brandon Cherry of McGuire Capital Group Realty.

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

5. [14-31916-E-13](#) **RUPERT/JOSEFINA ARENAS** **MOTION TO MODIFY PLAN**
JMC-7 **Joseph Canning** **10-28-16 [129]**

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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 28, 2016. By the court’s calculation, 53 days’ notice was provided. 42 days’ notice is required.

The Motion to Confirm the 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.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

TRUSTEE’S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on December 6, 2016. Dckt. 136. The Trustee notes that the latest proposed plan lists new amounts for priority claims by Franchise Tax Board (“FTB”) and the Internal Revenue Service (“IRS”). The FTB is to receive an additional \$7,266.00, and the IRS is to receive an additional \$43,000.00.

According to the Trustee’s records, the FTB had filed a proof of claim with \$690.23 listed as priority, which had been paid in full on May 31, 2016. The IRS had a proof of claim with \$45,680.02 listed as priority. The Trustee notes that neither creditor has filed an amended proof of claim, and the Trustee’s same objection was raised previously.

DEBTOR'S REPLY

Rupert Arenas and Josefina Arenas ("Debtor") filed a Reply on December 13, 2016. Dckt. 139. Debtor states that the proposed modified plan was prepared with input from the IRS as to the additional amounts listed. Debtor asserts that the IRS reviewed the Plan, and Debtor's attorney has spoken with both creditors, who state that they will file amended proofs of claim after confirmation.

DISCUSSION

Debtor has addressed the Trustee's concern by stating that the new numbers were reached with input from the IRS. Additionally, Debtor asserts that the IRS and the FTB will file amended claims. A review of the docket shows that no amended claim reflecting the new amounts has been filed yet. Nevertheless, the Trustee's only ground for opposing confirmation has been resolved (apparently). 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 the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtor's Modified Chapter 13 Plan filed on October 28, 2016, is confirmed. Counsel for the 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.

As provided in the Chapter 13 Plan, it is the amount stated in the proof of claim filed by, or for, a creditor that controls, and not an amount stated in the Plan. For the tax claims provided in the Plan, the Trustee shall pay the claim, based on the Proof of Claim or order of this court, if any, allowing the claim, and not the dollar amount stated in the Plan. It is incumbent on the creditor and the Debtor to insure that an accurate proof of claim is filed.

6. [14-27117-E-13](#) ANTHONY/GWENDOLYN LAND MOTION TO MODIFY PLAN
MJD-1 Matthew DeCaminada 10-20-16 [\[100\]](#)

Final Ruling: No appearance at the December 20, 2016 hearing is required.

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

Correct 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 20, 2016. By the court’s calculation, 61 days’ notice was provided. 42 days’ notice is required.

The Motion to Confirm the 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. Anthony Land and Gwendolyn Land (“Debtor”) have filed evidence in support of confirmation. David Cusick, the Chapter 13 Trustee, filed a qualified statement of non-opposition on December 5, 2016. Dckt. 113. The Trustee states that he has no opposition if Debtor’s Motion to Refinance is approved. The court approved that motion on December 6, 2016. Dckt. 115. 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 Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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). 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.

Benefit to the Estate

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' Committee 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 as 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] without considering the maximum probable [as opposed to possible] recovery.” *Id.* at 958. According 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?

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including pursuing motions to approve loan modifications and a motion to modify the plan. The court finds the services were beneficial to the Client and bankruptcy 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)."

Section 2.06 of the Modified 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. 71.

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). He 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. In the Ninth Circuit, the customary method for determining the reasonableness of a professional's fees is the "lodestar" calculation. *Morales v. City of San Rafael*, 96 F.3d 359, 363 (9th Cir. 1996), *amended*, 108 F.3d 981 (9th Cir. 1997). "The 'lodestar' is calculated by multiplying the number of hours the prevailing party reasonably expended on the litigation by a reasonable hourly rate." *Morales*, 96 F.3d at 363 (citation omitted). "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 County 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.

FEES REQUESTED

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

Motion to Approve Loan Modification (PGM-1): Applicant spent 3.80 hours in this category. Applicant assisted Client with reviewing a proposed loan modification, filing amended Schedules, responding to opposition to the modification, and appearing at the hearing when the modification was granted.

Motion to Approve Loan Modification (PPR-1): Applicant spent 1.45 hours in this category. Applicant assisted Client with reviewing and responding to JPMorgan Chase Bank’s proposed loan modification, which was denied.

Motion to Modify Plan (PGM-2): Applicant spent 5.50 hours in this category. Applicant assisted Client with responding to the Trustee’s Motion to Dismiss by proposing and eventually confirming a modified plan.

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
Peter Macaluso	8 hours	\$300.00	\$2,400.00
Total Fees For Period of Application			\$2,400.00

FEES ALLOWED

The unique facts surrounding the case, including reviewing loan modifications and confirming a modified plan, raise substantial and unanticipated work for the benefit of the estate, Debtor, and parties in interest. The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. The request for additional fees in the amount of \$2,400.00 is approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

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

Fees \$2,400.00

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

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

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

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

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

Peter Macaluso, Professional Employed by Chapter 13 Debtor

Fees	\$2,400.00
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The Fees and Costs pursuant to this Applicant are approved as final fees and costs pursuant to 11 U.S.C. § 330.

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

8. [16-26920-E-13](#) **EILEEN DAVIDSON**
DPC-1 **Peter Macaluso**

**OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK**
11-23-16 [12]

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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor’s Attorney on November 23, 2016. 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). The Debtor, Creditors, the 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 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 Objection to Confirmation of Plan is sustained.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that the Plan may fail the liquidation analysis of 11 U.S.C. § 1325(a)(4).

Eileen Davidson’s (“Debtor”) non-exempt equity totals at least \$6,978.00 from her interest in Mueller Property Trust, but Debtor is proposing a 15.5% dividend to unsecured creditors—or no less than \$5,530.20.

Debtor explains on Schedule B that she sold two of her six shares in the Trust to her brother and sister, who pay Debtor \$400.00 per month for the shares. Based on documents that Debtor provided to the Trustee at the Meeting of Creditors, Debtor is under an agreement to receive \$400.00 per month for nine years and three months, with no provision calling for a lump sum payment if the property is sold. As of filing, Debtor had received eight payments, leaving payments for the next eight years and six months totaling \$40,800.00. Debtor claims \$28,022.00 exempt on Schedule C, which leaves \$12,778.00 as non-exempt.

At the Meeting of Creditors, Debtor explained that she transferred her interest to her siblings who then sold the property. The sale is currently in escrow and is expected to close on December 6, 2016, for \$182,000.00. If the transfer of real property to Debtor's siblings was avoided or not properly recorded, then Debtor would hold a one-third interest in the property. After applying 8% costs of sale (\$14,400), Debtor's interest would be \$55,200.00, which trustee posits would increase her non-exempt amount on Schedule C up to \$27,178.00. The transfer of real property may not have been in the best interest of creditors. FN.1.

FN.1. This presumes that Debtor could claim an exemption in an asset that Debtor voluntarily transferred for which such transfer was avoided pursuant to 11 U.S.C. § 548. Such assumption may well be without legal support.

The Trustee believes that the Plan does not properly disclose the value of Debtor's interest in property, and it may fail the liquidation analysis. Debtor expects to receive a lump sum payment upon the close of escrow, but it may not be the amount that she would be entitled to receive.

In addition to objecting to the Plan, the Trustee requests that Debtor pay the lump sum to the Trustee to satisfy the liquidation concern.

The Trustee's objection is well-taken. Debtor has both not provided enough information to the Trustee to determine how the transfer of property and its value affects creditors under the Plan, and Debtor does not appear to have provided as much to unsecured creditors as they would receive in Chapter 7.

By the Trustee's calculations, Debtor has/had a \$55,200.00 interest in the property to be sold. But she has transferred that \$55,200.00 asset to her siblings for a \$400 a month payment for nine years. Debtor commenced this case on October 18, 2016, putting at least four years of the value in the period after the end of this plan. That is \$20,400.00 of payment stream value being deferred for Debtor and away from creditors.

Using the Microsoft Excel loan amortization program the court considers the present value of the \$55,200.00 "investment" to acquire a \$400 a month annuity for 110 months (for payments totaling \$44,000.00 over nine years and two months). The \$55,200.00 valued divided into 110 equal payments yields 110 payments of \$501.82 each.

Debtor's "investment" of the \$55,200.00 to her siblings causes the estate to lose 21% of the current value by taking the 110 monthly payments.

Payments of \$400.00 a month for 110 months, with an interest rate of only 3% per annum (used as the present value discount rate) supports an investment of only \$38,500.00. Thus, the "deal" that the siblings extracted from the Debtor does not provide her, or the estate, with fair value for her interest in the real property.

Debtor reports having a STRS pension as a retired teacher, thus a guaranteed income, in addition to her Social Security. Her basic expenses are provided for by her defined benefit pension plan income. There does not appear to be any bona fide, good faith reason for such a transfer with such a great loss to Debtor and her creditors.

It appears that Debtor has, and is attempting with her counsel's assistance, to protect this voluntary transfer of assets for less than fair value under color of federal law. Rather than an exempt asset, there appears to be a significant value of asset transferred to be recovered for the estate.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). In addition to the financial issues, the good faith of Debtor in filing this case, proposing the plan, and in making the transfer to her siblings is put at issue and Debtor appears to be lacking good faith on all three accounts.

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

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

9. [16-26225-E-13](#) MARIE GARY
DPC-1 Eric Vandermey

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY DAVID
P. CUSICK
10-24-16 [24]

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on October 24, 2016. 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). The Debtor, Creditors, the 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 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 Objection to Confirmation of Plan is ~~sustained~~/overruled.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that:

- A. The Plan will complete in more than the permitted sixty months.
- B. The Plan is inconsistent with regard to curing a mortgage arrearage of \$14,300.00 listed in Class 1 of the plan. In Class 1, the arrearages are to be paid \$405.00 per month, but in Section 6.01, \$238.33 per month is provided until paid in full.
- C. Marie Gary ("Debtor") has failed to provide documents including:
 1. Business questionnaire,
 2. Tax returns,

3. Profit and loss statements,
4. Bank account statements,
5. Proof of license and insurance or written statement of no such documentation exists, and
6. Business budget.

D. The Plan relies on the court valuing two secured claims of Green Tree Servicing.

NOVEMBER 22, 2016 HEARING

At the hearing, the court continued the matter to 3:00 p.m. on December 20, 2016, to allow Debtor time to address the remaining issues. Dckt. 38.

TRUSTEE'S STATUS UPDATE

The Trustee filed a Status Update in Support of Objection to Confirmation on December 2, 2016. Dckt. 41. The Trustee states that Debtor has resolved all issues, except to clarify the monthly dividend that the Trustee is to pay on Class 1 mortgage arrears owed to Ocwen Servicing. The Trustee requests that Debtor clarify the monthly dividend to mortgage arrears in the order confirming plan. The Trustee moves for the court to sustain the Objection unless Debtor addresses the Class 1 mortgage arrearage monthly dividend.

DISCUSSION

The Trustee's objections are well-taken, all but one of which has been cured.

The Trustee asserts that the Plan is inconsistent with regard to curing the mortgage arrears of \$14,300.00 listed in Class 1 of the Plan. In Class 1, the arrearages are to be paid \$405.00 per month, but in Section 6.01, the Debtor provides that the creditor will receive \$238.33 per month until paid in full. The Trustee is uncertain what dividend the Debtor intends for the arrears. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. *See* 11 U.S.C. §§ 1322(b)(2), (b)(5), and 1325(a)(5)(B). Because it is unclear whether the Plan will provide for the full payment of arrearages, the Plan cannot be confirmed.

At the hearing, Debtor reported that the Class 1 monthly dividend to Ocwen Servicing is to \$xxxx.xx.

The Plan ~~does not~~ comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is ~~sustained/overruled~~, 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 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 to confirmation the Plan is ~~sustained/overruled~~, and the proposed Chapter 13 Plan, ~~as amended to provide xxxxxxxxxxxx~~, is not confirmed. ~~Counsel for the Debtor shall prepare and forward to the Chapter 13 Trustee a proposed order confirming the Plan, including the foregoing amendment, which upon approval by the Trustee shall be lodged with the court.~~

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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) on November 16, 2016. 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). The Debtor, Creditors, the 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 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 Objection to Confirmation of Plan is sustained.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that:

- A. Shauna Dingus (“Debtor”) has not made any plan payments.
- B. Debtor has not provided tax returns.
- C. Debtor has failed to provide business documents.
- D. The Chapter 13 documents are incomplete.
- E. Debtor’s plan fails the liquidation analysis.

Debtor is \$995.00 delinquent in plan payments, which represents one month of the \$995.00 plan payment. Delinquency indicates the Plan is not feasible, and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

The Chapter 13 Trustee argues that the 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); 11 U.S.C. § 1325(a)(9); Fed. R. Bankr. P. 4002(b)(3). That is an independent ground to deny confirmation. 11 U.S.C. § 1325(a)(1).

The Trustee asserts that Debtor failed to file the following business documents:

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

11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). These documents are required seven days before the date set for the first meeting, 11 U.S.C. § 521(e)(2)(A)(I). Without the Debtor submitting required documents, the court and the Trustee are unable to determine if the plan is feasible, viable, or complies with 11 U.S.C. § 1325.

The Trustee notes that Debtor cannot comply with 11 U.S.C. § 1325(a)(6) because portions of the Plan are incomplete. Debtor left Section 2.15 blank, failing to list a dividend to unsecured creditors, even if it is 0%. Debtor improperly listed Santander Consumer USA in Class 1. Santander is secured by personal property (a vehicle), and Debtor has not valued the property on Schedule D; Schedule J lists a car payment of \$283.00.

Also, Debtor listed Wells Fargo in Class 1 regarding her residence with an arrearage of \$0.00. Schedule J lists ongoing mortgage payments of \$718.16, though. Wells Fargo's treatment under the Plan is unclear.

On Schedule A, Debtor listed three items of real property:

- A. 4173 County Road K, Orland, California;
- B. 6544 County Road 20, Orland, California; and
- C. "Remaining Lands."

The Plan does not provide any treatment for 6544 County Road or for "Remaining Lands," and no information is listed on Schedule D either. The Trustee is unsure what treatment is meant for those properties or if any treatment should even be listed in the Plan.

The value of assets on Schedules B and C do not match.

Schedule E lists Bill Rackley as a creditor for a "Private Loan," but the Trustee does not believe that he qualifies as a priority creditor. Schedule F notes that there are no unsecured creditors, but the Trustee is not sure if that is true. Finally, Debtor's Schedule I income is unclear. She listed \$5,000.00 gross income per month and \$1,000.00 as "Expenses," but she has not provided any attachment with explanations. Given the incomplete state of the Plan, Debtor will not be able to comply with the plan or make plan payments under 11 U.S.C. § 1325(a)(6).

The Trustee also opposes confirmation of the Plan on the basis that the Debtor's plan fails the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Trustee states that Debtor has supplied insufficient information relating to the real property to assist the Trustee in determining the value of the property. Debtor reports values that are significantly below amounts that the Trustee computes, and Debtor has not claimed any exemptions.

The Trustee's objections are well-taken.

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 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.

11. [16-26327-E-13](#) **SHAUNA DINGUS**
DRG-1 **Pro Se**

**OBJECTION TO CONFIRMATION OF
PLAN BY BILL R. RACKLEY**
11-16-16 [40]

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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Chapter 13 Trustee on November 16, 2016. 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). The Debtor, Creditors, the 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 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 Objection to Confirmation of Plan is sustained.

Creditor Bill Rackley opposes confirmation of the Plan on the basis that:

- A. Shauna Dingus’s (“Debtor”) plan does not provide for Creditor’s claim, and the debt was procured by fraud.
- B. The Plan is not proposed in good faith.
 - 1. Debtor’s projected disposable income has been concealed or not properly set forth.
 - 2. Debtor’s plan is not in the best interest of creditors.

Creditor contends that Debtor acquired a debt from Creditor by way of fraud, and Creditor has initiated an Adversary Proceeding against Debtor to determine whether the debt is nondischargeable pursuant to 11 U.S.C § 523(a)(2). *See* Case No. 16-02249.

As to Debtor's disposable income, Creditor argues that it has been concealed. Debtor, who claims to be married, lists monthly expenses of \$2,793.00, including \$780.00 for utilities, \$718.16 for mortgage payments, and \$1,000.00 for horse feed. Creditor objects that Debtor has failed to explain why she has not listed any horses as being assets on her schedules and what part of the monthly expenses are attributed to her husband.

Creditor also notes that Debtor lists earning \$5,000.00 per month as a consultant from an unknown employer, with \$1,000.00 in unspecified payroll expenses, netting income of \$4,000.00. Debtor does not list any income from her husband. Creditor opposes confirmation because Debtor has not explained who employs her, what the payroll expenses are, why she does not list paying or deducting any taxes from income, and what income her husband contributes.

As another ground, Creditor objects that unsecured creditors do not receive at least as much under the proposed plan as they would under Chapter 7. Creditor is the only listed unsecured creditor, and the Plan does not provide for any payments to him. Creditor notes that Debtor has only listed her half of interests in community property, but Creditor asserts that Debtor should be listing the full value of community property, which would provide equity to make payments to Creditor.

The Creditor's objections are well-taken. As to the first ground that the debt was procured by fraud, the court notes that an Adversary Proceeding has been filed (Case No. 16-02249), and the resolution of that proceeding will determine whether it is a valid objection to Debtor's Plan.

The Creditor next alleges that the Plan violates 11 U.S.C. § 1325(b)(1), which provides:

[i]f the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan--(A) the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or (B) the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

Creditor may not have listed all current monthly income under 11 U.S.C. § 1325(b)(2) because she has failed to state whether her husband contributes any monthly income to the household.

The Creditor opposes confirmation of the Plan on the basis that the Debtor's plan may fail the Chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4) because Debtor has not listed half of the interest in community property.

While Debtor has reported half of the value of her community property assets, and the Debtor is proposing a 0% dividend to unsecured creditors, additional equity exists. The Debtor has not explained how, under the proposed plan and the schedules filed under penalty of perjury, that the unsecured claimants

are entitled to a 0% dividend when 11 U.S.C. § 541(a)(2) includes all of a debtor and debtor's spouses' interest in community property.

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

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

12. [13-31632-E-13](#)
PGM-7

JANELLE GILMORE
Peter Macaluso

MOTION TO MODIFY PLAN
11-10-16 [[166](#)]

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.

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on November 10, 2016. By the court's calculation, 40 days' notice was provided. 42 days' notice is required.

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 Modified Plan is denied without prejudice.

INSUFFICIENT NOTICE PROVIDED

Forty days' notice was provided, instead of the required forty-two days' minimum notice. *See* L.B.R. 3015-1(d)(1) & 9014-1(f)(1); Fed. R. Bankr. P. 2002(b). The Motion is denied without prejudice.

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

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

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Amended Plan is denied without prejudice.

THE COURT HAS PREPARED THE FOLLOWING ALTERNATIVE RULING IF DEBTOR MAKES, AND THE COURT GRANTS, THE COURT GRANTS A MOTION TO SHORTEN TIME

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on December 6, 2016. Dckt. 172. The Trustee states that Janelle Gilmore ("Debtor") is delinquent under the proposed plan in the amount of \$75.00. Additionally, Debtor has not explained increases to expenses that the court acknowledged in a ruling. The court notes that Debtor has presented "Updated" Schedules I & J with the Motion (Dckt. 169), but Debtor has not testified explicitly about what caused the increases; Debtor mentions in passing that her landlord raised the rent and charged a water service fee. Dckt. 168.

DEBTOR'S REPLY

Debtor filed a Reply on December 13, 2016. Dckt. 175. Debtor states that she will be current on or before the hearing. Unfortunately for Debtor, a promise to pay is not evidence of such.

The main basis for the Trustee's objection is that the Debtor is \$75.00 delinquent in plan payments, which represents less than one month of the plan payments. Delinquency indicates that the Plan is not feasible, and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6).

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 Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

13. [12-40834-E-13](#) **DAVID/SHELLIE FISCHER**
CA-7 **Michael Croddy**

**CONTINUED MOTION FOR
COMPENSATION BY THE LAW OFFICE
OF CRODDY & ASSOCIATES, P.C. FOR
MICHAEL D. CRODDY, DEBTORS'
ATTORNEY(S)**
6-28-16 [[108](#)]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, and Office of the United States Trustee on June 28, 2016. By the court’s calculation, 21 days’ notice was provided. 21 days’ notice is required. (Fed. R. Bankr. P. 2002(a)(6), 21 day notice requirement.)

The Motion for Allowance of Professional Fees was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the 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 for Allowance of Professional Fees is granted.

Michael D. Croddy, the Attorney (“Applicant”) for David Wayne Fischer and Shellie Jean Fischer the Debtor (“Client”), makes a Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period November 1, 2012 through July 19, 2016. Applicant requests fees in the amount of \$6,975.00, which is for almost the entire period of this case. In substance, this Motion requests the court give final approval to the two prior amounts of interim fees approved. As discussed below, the court continued the hearing to this date in light of Client being at the end of the case and the then pending plan modification providing for the conclusion of the case, to allow Applicant to file supplemental pleadings for any additional fees relating to this second and final fee application.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee opposes the Motion for Allowance of Professional Fees for the following reasons:

1. The Movant only provided 14 days notice when FRBP 2002(a)(6) requires 21 days notice of a motion for compensation. This has been addressed by the court having continued the hearing.
2. Various discrepancies exist between the motion and the record. The Caption of the Motion indicates this is the First Interim Application for Fees when a review of the record reveals that this is not the first fee application in this case. Applicant previously requested fees of \$5,042.90 by Motion filed January 22, 2013. Dckt. 32. That Motion sought fees for work performed from November 1, 2012 through January 22, 2013. The fees were granted by Civil Minute Order dated March 1, 2013. Dckt 48. The instant Motion further states on Page 2, lines 18-23 that prior to the filing of the case, Applicant received fees of \$5,923.90 and no further fees have been allowed by this court. The Trustee's records indicate that Applicant was paid \$5,042.90 by Trustee check #667106 on May 31, 2013, the disbursement of the fees awarded by the Order dated March 1, 2013.
3. The Debtor has a pending motion to modify. Dckt 95 and 103. Both motions may depend on the Schedule I which includes a detail, "property management income listed above assumes 75% occupancy on \$1,838.50=\$1,379.63," present in the latest Schedule I filed June 21, 2016, and in the original Schedule I filed November 30, 2012. Dckts. 102 and 1.

The Trustee recommends that this motion be continued to be heard on the same dates as the motions to modify.

JULY 19, 2016 HEARING

At the hearing, the court continued the matter to 3:00 p.m. on August 2, 2016 so the Applicant can file and serve Supplemental Pleadings on or before July 26, 2016.

AUGUST 2, 2016 HEARING

At the hearing, the court approved Second Interim Fees and continued the matter to 3:00 p.m. on December 20, 2016, for final approval of First and Second Interim Fees and any further fees in this case. Dckt. 140.

The court directed Applicant to file a supplemental statement of any additional fees and costs requested by December 1, 2016.

TRUSTEE'S STATUS REPORT

The Trustee filed a Status Report on December 13, 2016. Dckt. 151. The Trustee reports that no supplemental pleading has been filed regarding additional fees in this case.

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). 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.

Benefit to the Estate

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' Committee 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 as 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] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According 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?

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including multiple motions to value and multiple motions to confirm. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

Applicant requests fees as provided by Local Bankruptcy Rule 2016-1. He 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. In the Ninth Circuit, the customary method for determining the reasonableness of a professional's fees is the "lodestar" calculation. *Morales v. City of San Rafael*, 96 F.3d 359, 363 (9th Cir. 1996), *amended*, 108 F.3d 981 (9th Cir. 1997). "The 'lodestar' is calculated by multiplying the number of hours the prevailing party reasonably expended on the litigation by a reasonable hourly rate." *Morales*, 96 F.3d at 363 (citation omitted). "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 loadstar 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 County Bd. of Educ.*, 827 F.2d 617, 620 n.4 (9th Cir. 1987). Therefore, the court has considerable discretion in determining the reasonableness of 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.

FEES REQUESTED

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

Significant Motions and Other Contested Matters: Applicant spent 18.6 hours in this category. Applicant Prepared and filed documents, multiple motions to value and multiple motions to confirm.

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
Michael Croddy	18.6	\$375.00	\$6,975.00
	0	\$0.00	<u>\$0.00</u>
Total Fees For Period of Application			\$6,975.00

Pursuant to prior Interim Fee Applications the court has approved pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330.

Application	Interim Approved Fees	Interim Fees Paid
First Interim	\$5,923.00	\$5,923.00
Second Interim	\$0.00	\$0.00
Third Interim	\$0.00	\$0.00
	<u>\$0.00</u>	
Total Interim Fees Approved Pursuant to 11 U.S.C. § 331	\$5,923.00	

DISCUSSION

A pleading titled “Counsel’s Reply to Trustee’s Objection was filed on June 27, 2016. Dckt. 131. The subtitle to this document is “Declaration and Reply.” It appears that Counsel has “shortcut” filing a proper response, giving the court a supplemental points and authorities, making arguments and citing legal authorities, and rolling in some testimony into one hybrid document. As provided in Local Bankruptcy Rule 9004-1 and the Revised Guideline for Preparation of Documents; Section III, A; requires that they be filed as separate documents.

In the “DeclaPly” (the combined declaration and reply) counsel argues/testifies that the court should reject the Trustee’s contention that inadequate notice was given of the Motion. (By continuing the hearing, the court has rectified any such notice issue, if it exists.) The DeclaPly states that the motion was filed on June 28, 2016 and the hearing was set for July 19, 2016. Dckt. 131, p.1:23-25. Counsel computes there being exactly 21 days notice provided.

While Counsel references the filing date, the court notes that the Certificate of Service states that the motion and supporting pleadings were actually served on June 28, 2016. Dckt. 112. That results in there being two days for notice in June and 19 days in July, for a total of 21 days. Fed. R. Bankr. P. 9006(a)(1). In addition, Federal Rule of Bankruptcy Procedure 9006(f) provides for adding three additional days when service is by mail.

The DeclaPly then addresses the following points:

- A. This is a Final Fee Application and it appears from the DeclaPly that the reference to it being a First Interim Application was a typographical error.
- B. Counsel has not received a retainer, with the Debtor providing only \$281.00 for the filing fee.
- C. Counsel has been paid \$5,042.90 in fees and \$281.00 for reimbursement of the filing fee. Counsel also gave Debtor a \$600.00 “professional credit.”
- D. By the current Final Application Counsel seeks an additional \$6,975.00 in compensation for the period January 23, 2013 through July 19, 2016.
- E. In this Final Application Counsel requests that the court:
 1. Approve \$12,450.00 in fees and \$448.90 in costs for the period January 23, 2013 through July 19, 2016;
 2. Apply the \$600.00 professional credit, \$5,042.90 paid previously by the Chapter 13 Trustee, and the \$281.00 received for payment of the filing fee.

In the DeclaPly, Counsel notes that this is the first time he has sought fees by opting out of taking a set fee in a Chapter 13 case. This may have led to the confusion in how he seeks to have the fees determined.

For the period November 1, 2012, through January 22, 2013, the court has allowed \$5,923.90 in fees and costs, with \$5,042.90 to be paid through the Chapter 13 Plan. Civil Minutes, Dckt. 44. The court’s findings include that Counsel reported having received \$881.00 prior to the Chapter 13 case. *Id.*

This Application seeks not only final approval of the prior interim fees (11 U.S.C. § 331, L.B.R. 2016-1), but additional fees and costs. The additional fees and costs are for the period January 23, 2013 through July 19, 2016.

Counsel has provided a task billing analysis, which included all of the fees from the start of the case. Though this could be confusing, the detail provided by Counsel makes separating out the out of period charges a relatively simple task for the court. (Since appears to be Counsel’s first opt-out billing, it is not inappropriate for the court to do this, though Counsel should not count on it occurring in future cases.)

The Total Fees of \$12,450.00 and Costs of \$448.90 (page 8 of Exhibit C) are broken down as follows:

- a. Prior to January 23, 2013
 - i. Fees.....\$5,100.00
 - ii. Costs.....\$ 448.90

- b. January 23, 2013 through July 19, 2016
 - i. Fees.....\$7,350.00
 - ii. Costs.....\$ 0.00

For the First Interim Fee Motion, the court stated that Counsel requested \$5,923.00 in fees and costs (the ruling not breaking out the two amounts), that Counsel reported that \$881.00 was received prior to filing the case. On the time and charges record (Exhibit C, Dckt. 34), the fees are stated to be \$5,475.00 and the expenses are \$448.90, generating total fees and costs of \$5,923.00.

The court allowed the \$5,923.00 in fees, then allowed for the \$881.00, and authorized the Chapter 13 Trustee to pay \$5,042.90 through the Chapter 13 Plan. Civil Minutes, Dckt. 44. With respect to the \$881.00, it appears that such amount was not received, but consists of \$281.00 received and a “professional discount” of \$600.00 given by Counsel.

The Chapter 13 Trustee has disbursed \$5,042.90 pursuant to the prior order and nothing remains to be paid for the fees and costs allowed in the First Interim Application.

Based on the prior First Interim Application allowing fees in the amount of \$5,475.00, there can be only \$6,975.00 in fees relating to the Second and Final Fee Application period. Counsel confirms this in the DeclaPly.

The court finds that the \$6,975.00 in fees for this Second Interim period of time is reasonable and provided value and benefit to the Debtor, the plan estate, and the bankruptcy estate.

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

Fees	\$12,017.90
------	-------------

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

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

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

The Motion for Allowance of Fees and Expenses filed by Michael Croddy (“Applicant”), Attorney for the Debtor in Possession having been presented to the

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

IT IS ORDERED that Michael Croddy is allowed the following fees and expenses as a professional of the Estate:

Michael Croddy, Professional employed by the Chapter 13 Debtor

Fees in the amount of \$12,017.90

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 13 Debtor.

The fees and costs pursuant to this Motion, and fees in the amount of \$5,042.90 approved pursuant to prior Interim Application are approved as final fees pursuant to 11 U.S.C. § 330.

IT IS FURTHER ORDERED that the 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.

IT IS FURTHER ORDERED that counsel for Debtor may seek, as part of this final fee application, additional fees of not more than \$1,000.00, which may be requested by ex parte motion served on the Chapter 13 Trustee and U.S. Trustee for any of the services provided upon the completion of the Chapter 13 Plan and for Debtor to obtain a discharge.

14. [16-20335-E-13](#) **ROBERT/BELINDA BOUGHTON** **MOTION TO MODIFY PLAN**
TLA-2 **Thomas Amberg** **10-24-16 [35]**

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.

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

Correct 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 24, 2016. By the court’s calculation, 57 days’ notice was provided. 35 days’ notice is required.

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

The Motion to Confirm the Modified Plan is ~~XXXXX~~.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

TRUSTEE’S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on December 6, 2016. Dckt. 41. The Trustee states that Robert Boughton and Belinda Boughton (“Debtor”) are delinquent under the proposed plan in the amount of \$685.00.

DEBTOR’S REPLY

Debtor filed a Reply on December 9, 2016. Dckt. 44. Debtor states that there was a clearing delay with the TFS system, but that the Trustee’s website now shows them as current on payments.

DECEMBER 20, 2016 HEARING

At the hearing, the Trustee reported that the delinquency ~~has~~ ~~has not~~ been cured.

The Modified Plan ~~complies/does not comply~~ with 11 U.S.C. §§ 1322, 1325(a), and 1329 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 Modified Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Modified Plan is ~~xxxxxx~~.
~~Counsel for the Debtor shall prepare and forward to the Chapter 13 Trustee a proposed order confirming the Plan, which upon approval by the Trustee shall be lodged with the court.~~

15. [16-26438-E-13](#) **BILLY TENBERG**
DPC-1 **Mark Briden**

**OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK**
11-16-16 [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 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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor’s Attorney on November 16, 2016. 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). The Debtor, Creditors, the 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 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 Objection to Confirmation of Plan is sustained.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that:

- A. Billy Tenberg (“Debtor”) did not provide his last filed tax return seven days before the Meeting of Creditors.
- B. Debtor cannot make the plan payments or comply with the Plan:
 - 1. Wells Fargo Mortgage is listed on Schedule D, but it is not provided for in the Plan.
 - 2. There are three Bank of America debts listed as “credit” on Schedule F, and some portions of them may be secured.
- C. Debtor may have undisclosed business income:

1. Schedule I lists employment as a truck driver with no business income, but Debtor's 2015 tax return shows gross business of over \$130,000.00 per year.

The Trustee's objections are well-taken. The Trustee argues that the 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); 11 U.S.C. § 1325(a)(9); Fed. R. Bankr. P. 4002(b)(3). This is an independent ground to deny confirmation. 11 U.S.C. § 1325(a)(1).

The Debtor may not be able to make plan payments or comply with the plan under 11 U.S.C. § 1325(a)(6). There is a secured claim listed on Schedule D that is not mentioned in the Plan, and there are three Bank of America debts on Schedule F that may be somewhat secured. Without an accurate picture of the Debtor's financial reality, the court cannot determine whether the plan is confirmable. Therefore, the objection is sustained.

Finally, Debtor has submitted conflicting statements about his income, ranging from \$0.00 on Schedule I to more than \$130,000.00 reported on a 2015 tax return.

In reviewing Debtor's Schedules and Statement of Financial Affairs it appears that there are further inconsistencies. Debtor states that he owes the Internal Revenue Service "back taxes" totaling \$15,103.17 for "2014/2015." Schedule E Priority debts, Dckt. 1 at 20. On Schedule F, for general unsecured claims Debtor lists at least one "Business Card" creditor. *Id.* at 22.

On Schedule I Debtor states that he is, and has been for 26 years, employed as a truck driver for Hemsted North American Van Lines. *Id.* at 29. Debtor lists "gross wages" of \$5,000.00 a month, with no deductions or withholding. In addition, Debtor lists receiving \$1,100.00 a month in Social Security benefits. *Id.* These total \$6,100.00 a month, which is an annual total of \$73,200.00.

On Schedule J Debtor lists "taxes" of \$400.00 a month. *Id.* at 32. Debtor also lists non-specific "work business expenses" in the amount of \$1,100.00. *Id.* Debtor does not provide a detailed statement of business income and expenses relating to such "expenses."

Conflicting with the income statements under penalty of perjury on Schedule I, Debtor state under penalty of perjury that his total gross income from wages or business income was \$13,215.00 in 2016 (eight months), \$18,415.00 in 2015, and \$0.00 in 2014. Statement of Financial Affairs Part 2, Question 4; Dckt. 1.

Debtor states that he received Social Security income of \$11,000.00 in the first eight months of 2016 and \$13,200.00 in 2015. *Id.*, Question 5.

This income information is inconsistent with Debtor owing more than \$15,000.00 in federal income taxes for "2014/2015." On very, very, modest gross income and modest Social Security income, Debtor's would have an average tax rate of 50% for gross income (assuming that Debtor could take no deductions) which would be taxed in the lowest tax brackets.

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 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 confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

16. [16-26438-E-13](#) **BILLY TENBERG**
LHL-1 **Mark Briden**

**OBJECTION TO CONFIRMATION OF
PLAN BY BANK OF AMERICA, N.A.
11-8-16 [17]**

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, and Office of the United States Trustee on November 8, 2016. By the court’s calculation, 42 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). The Debtor, Creditors, the 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 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 Objection to Confirmation of Plan is overruled without prejudice.

Bank of America, N.A., a creditor with a secured claim, opposes confirmation of the Plan on the basis that Billy Tenberg’s (“Debtor”) plan does not classify Creditor’s claim as secured. Creditor notes that there appears to be equity above the lien of the first deed of trust to provide payment to Creditor.

No proof of claim has been filed by Creditor, and despite Creditor’s suggestion that it may be treated as an unsecured creditor on Debtor’s Schedules and Plan, the court cannot determine that definitively. The Proof of Claim is prima facie evidence of the obligation owed by the Debtor. Fed. R. Bankr. P. 3001(d). Thus, irrespective of any amount stated in the Plan, the proof of claim controls. Chapter 13 Plan, Section 2, ¶ 2.04; Dckt. 5.

A review of Creditor’s exhibits and Debtor’s schedules reveals that Bank of America, N.A. has not been listed as a holder of a secured claim. Bank of America, N.A. has been listed as an unsecured claimholder for three credit accounts, but none of the addresses of Schedule D for Creditor match the address provided in Creditor’s exhibits. Creditor may have a valid argument, but the court cannot determine that at the moment.

The Objection is overruled without prejudice. The court has denied confirmation of the plan pursuant to the objection of the Trustee. FN.1.

FN.1. On Friday, December 16, 2016, Bank of America, N.A. filed a proof of claim that asserts a claim secured by Debtor's real property. While late and not timely "evidence" for such contention, if it does exist and has been intentionally ignored by Debtor, it makes the potential misstatements under penalty of perjury by Debtor even more pervasive.

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 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 is overruled without prejudice. The Chapter 13 Plan is not confirmed, the court having sustained the Chapter 13 Trustee's objection to confirmation. DCN: DPC-1.

17. [16-20641-E-13](#)
RS-1

KACEE PEREZ
Richard Sturdevant

MOTION TO MODIFY PLAN
11-2-16 [25]

Final Ruling: No appearance at the December 20, 2016 hearing is required.

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

Correct 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 November 2, 2017. By the court’s calculation, 48 days’ notice was provided. 35 days’ notice is required.

The Motion to Confirm the 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. Kacee Perez (“Debtor”) has filed evidence in support of confirmation. David Cusick, the Chapter 13 Trustee, filed a qualified statement of non-opposition on December 6, 2016. Dckt. 39. The Trustee notes that City of Chico Community Development Dpt is listed in Class 4 of the confirmed plan, but listed in Class 2 A of the proposed plan. The creditor agreed to Class 4 treatment by signing the original plan, and Debtor’s proposed plan does not propose a monthly dividend. Therefore, the Trustee requests that the order confirming the modified plan provide for that creditor in Class 4.

The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed as amended by the Trustee’s proposal.

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

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

The Motion to Confirm the Chapter 13 Plan filed by the Debtor 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, Debtor's Chapter 13 Plan filed on November 2, 2016, and as amended on the record to include City of Chico Community Development Dpt in Class 4, is confirmed. Counsel for the 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.

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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) on November 16, 2016. 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). The Debtor, Creditors, the 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 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 Objection to Confirmation of Plan is sustained.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that:

- A. Alvaro Rodriguez (“Debtor”) failed to appear the Meeting of Creditors.
 - 1. The meeting has been continued to 1:30 p.m. on January 26, 2017.
- B. Debtor has not provided the Trustee with employer payment advices for the sixty-day period prior to filing.
- C. Debtor has not provided tax returns for the most recent year required or a written statement that no such documentation exists.
- D. Debtor’s plan relies on a Motion to Value Secured Claim of Wells Fargo Dealer Services, which has not been filed, and if it is not granted, then Debtor cannot afford plan payments.

E. Debtor is married, and his wife is not included in the bankruptcy case, but Debtor has failed to file a spousal waiver for use of the California exemptions.

1. The Trustee's Objection to Claimed Exemptions is set for January 10, 2017.

The Trustee's objections are well-taken.

A basis for the Trustee's objection was that the Debtor did not appear at the meeting of creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. *See* 11 U.S.C. § 343. To attempt to confirm a plan while failing to appear and be questioned by the Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). This is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Debtor has not provided the 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). Also, the Trustee argues that the 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); 11 U.S.C. § 1325(a)(9); Fed. R. Bankr. P. 4002(b)(3). Debtor has failed to provide all necessary pay stubs and has failed to provide the tax transcript. These are independent grounds to deny confirmation. 11 U.S.C. § 1325(a)(1).

A review of the Debtor's plan shows that it relies on the court valuing the secured claim of Wells Fargo Dealer Services. Debtor has failed to file a Motion to Value the Collateral of Wells Fargo Dealer Services. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

The Trustee objects to the Debtor's use of the California exemptions without the filing of the spousal waiver required by California Code of Civil Procedure § 703.140. California Code of Civil Procedure § 703.140, subd. (a)(2), provides:

If the petition is filed individually, and not jointly, for a husband or a wife, the exemptions provided by this chapter other than the provisions of subdivision (b) are applicable, except that, if both the husband and the wife effectively waive in writing the right to claim, during the period the case commenced by filing the petition is pending, the exemptions provided by the applicable exemption provisions of this chapter, other than subdivision (b), in any case commenced by filing a petition for either of them under Title 11 of the United States Code, then they may elect to instead utilize the applicable exemptions set forth in subdivision (b).

(emphasis added). The court's review of the docket reveals that the spousal waiver has not been filed.
FN.1.

FN.1. The court notes that this is not Debtor's only recently filed bankruptcy case. Debtor filed Chapter 13 case no. 16-25420 on August 17, 2016, which was dismissed on September 6, 2016. Debtor filed Chapter 7 case no. 12-32171 on June 29, 2012, and received his discharge on October 15, 2012.

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 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 confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

Final 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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor’s Attorney on November 16, 2016. 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). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

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

The Objection to Confirmation of Plan is overruled as moot.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that:

- A. The additional provisions add improper language:
 - 1. Douglas Tooley (“Debtor”) included a step plan as a separate exhibit, instead of listing it in Section 6.01 of the Plan.
- B. Debtor listed Nationstar Mortgage LLC twice in Class 1, possibly indicating that Debtor owes two separate debts to Nationstar, and Nationstar may not be entitled to interest under 11 U.S.C. § 1322(e), unless the note provides for interest on late payments or applicable non-bankruptcy law requires it.

1. HSBC Bank filed a claim with payments delivered to Nationstar Mortgage LLC (Claim No. 4), and the attached note does not appear to call for interest, except on unpaid principal.
- C. Debtor lists total unsecured claims of \$990.91 on Section 2.15, but Schedule F states that the amount is \$41,306.00.

Subsequent to the filing of this Motion, Debtor filed a first amended plan and corresponding motion to confirm on December 7, 2016. Dckts 20 & 23. Filing a new plan is a de facto withdrawal of the pending plan. The Objection to Confirmation of the Chapter 13 Plan 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 Confirmation of the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, Debtor having filed an amended plan and motion to confirm said amended plan, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled as moot, and the proposed Chapter 13 Plan is not confirmed, Debtor having elected to file an amended plan and not pursue confirmation of the Chapter 13 Plan that is the subject of this Objection.

20. [16-26647](#)-E-13 **MARTIN DUARTE**
DPC-1 **Mark Wolff**

**CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY DAVID
P. CUSICK
11-10-16 [16]**

Final Ruling: No appearance at the December 20, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor’s Attorney on November 10, 2016. 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). The Debtor, Creditors, the 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 hearing on the Objection to Confirmation of Plan has been continued to 3:00 p.m. on February 28, 2017, pursuant to the stipulation of the parties. Stipulation, Dckt. 26 and order thereon.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that:

A. The Debtor failed to appear at the First Meeting of Creditors held on November 3, 2016. The Trustee does not have sufficient information to determine whether or not the case is suitable for confirmation. The Meeting of Creditors has been continued to December 8, 2016, at 1:30 p.m.

The Trustee reports that Debtor appeared at the December 8, 2016 Meeting of Creditors, which as been further continued to February 16, 2017, to allow Debtor to continue in his efforts to get the prior years tax returns completed and filed.

B. Based on the claim filed by the Internal Revenue Service, the Debtor has not filed federal tax returns for 2010, 2012, 2013, 2014, and 2015.

DECEMBER 6, 2016 HEARING

At the hearing, the court continued the matter to 3:00 p.m. on December 20, 2016. Dckt. 25.

DECEMBER 20, 2016 HEARING

The hearing is further continued to allow Debtor to continue in addressing the filing of the necessary tax returns.

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 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 to confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

21. [15-24950-E-13](#)
TAG-2

IAIN/DINEEN FRASER
Ted Greene

MOTION TO MODIFY PLAN
10-26-16 [50]

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

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

Correct 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 26, 2016. By the court's calculation, 55 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the 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.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on December 6, 2016. Dckt. 56. The Trustee notes that the proposed plan calls for payments of \$2,560.00 for fifty-six months, but additional provisions include a lump sum payment of \$10,000.00 to be paid in by November 25, 2016, including \$4,400.00 paid by October 25, 2016.

The Trustee reports that Iain Fraser and Dineen Fraser ("Debtor") have been paid \$2,560.00 each month as well as the lump sum payment. Under the proposed plan, Debtor would need to have paid at least \$50,960.00 through November 25, 2016. Debtor has actually paid \$53,520.00, which is \$2,560.00 ahead.

The Trustee is uncertain whether the proposed plan calls for Debtor to have paid \$53,520.00 or \$50,960.00 through November 2016. The Trustee requests clarification in the order confirming.

DEBTOR'S REPLY

Debtor filed a Reply on December 7, 2016. Dckt. 59. Debtor clarifies that \$38,400.00 was to be paid into the Plan by October 25, 2016, not \$4,400.00 as stated by the Trustee. Debtor believes that the Trustee's statement was merely a typographical error.

Debtor explains further that the proposed plan provides for ongoing monthly payments of \$2,560.00 per month, the same as in the previously confirmed plan, but now there is an additional lump sum payment of \$10,000.00 due by November 25, 2016. Debtor notes that the Trustee acknowledges receiving both the monthly payments and the lump sum payment. Debtor asserts being current under the proposed plan.

DISCUSSION

Debtor has explained sufficiently that the payment terms of the proposed plan are the same as in the confirmed plan, except that the present plan calls for an additional \$10,000.00 lump sum payment, which has been paid to the Trustee. 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 Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on October 26, 2016, is confirmed. Counsel for the 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.

Final Ruling: No appearance at the December 20, 2016 hearing is required.

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

Correct 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 November 8, 2016. By the court’s calculation, 42 days’ notice was provided. 35 days’ notice is required.

The Motion to Confirm the 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. Philip Holden and Yvette Holden (“Debtor”) filed evidence in support of confirmation. David Cusick, the Chapter 13 Trustee, filed a statement of non-opposition on December 5, 2016. Dckt. 137. 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 Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtor’s Chapter 13 Plan filed on November 8, 2016, is confirmed. Counsel for the 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.

23. [16-21854-E-13](#) **KENNETH TABOR** **MOTION TO MODIFY PLAN**
SNM-3 **Stephen Murphy** **11-2-16 [89]**

Final Ruling: No appearance at the December 20, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on November 2, 2016. By the court’s calculation, 48 days’ notice was provided. 35 days’ notice is required.

The Motion to Confirm the 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. Kenneth Tabor (“Debtor”) has filed evidence in support of confirmation. David Cusick, the Chapter 13 Trustee, filed a statement of non-opposition on December 6, 2016. Dckt. 112. 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 Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtor’s Chapter 13 Plan filed on November 2, 2016, is confirmed. Counsel for the 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. [12-24258-E-13](#) **DARRELL WILLIAMS** **MOTION TO MODIFY PLAN**
FF-9 **Gary Fraley** **11-15-16 [154]**

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.

Correct 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 November 15, 2016. By the court’s calculation, 35 days’ notice was provided. 35 days’ notice is required.

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

The Motion to Confirm the Modified Plan is denied.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

TRUSTEE’S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on December 8, 2016. Dckt. 159. The Trustee informs the court that Section 6.05 of the proposed plan directs the Trustee to make a one-time payment of \$3,559.03 directly to One West Bank Mortgage Company (Claim No. 6). Debtor’s motion and declaration refer to Darrell Williams’ (“Debtor”) Fourth Modified Plan and state that Debtor continued to pay \$1,750.00 to the Trustee for the period of July 2016 through October 2016. Debtor’s actual payments

were \$1,716.48 for those months. Debtor state that he believed that the Trustee would be making the ongoing mortgage payments, and Debtor now asks the Trustee to make the July through October mortgage payments.

In Debtor's original confirmed plan, One West Bank (IndyMac) was included in Class 4. The property address for the claim was 5814 Longs Peak Place, Sacramento, California. That confirmed plan also included Wells Fargo Home Mortgage in Class 1. Wells Fargo Bank filed Claim No. 11 for property at 3633 Lankershim Way, North Highlands, California. Debtor's Fourth Modified Plan moved Wells Fargo Bank, N.A. from Class 1 to Class 4.

The Trustee believes that Section 6.05 of the proposed plan should reference Wells Fargo Bank, N.A., not One West Bank Mortgage Company. The Trustee has not made payments to One West Bank Mortgage Company because it has been listed in Class 4 consistently.

The Trustee calculates that \$3,164.94 would be due to Wells Fargo Bank, N.A. for July through October 2016 (\$806.67 monthly for July through September per loan modification, and \$744.93 for October).

The Trustee states that he spoke with a paralegal in Debtor's attorney's office about the error and requested that this Motion be withdrawn.

DISCUSSION

The Trustee's objection is well-taken. The Trustee has provided evidence that the wrong party may be listed in Class 1 of the proposed plan. Debtor has not filed any supplemental pleading to clarify the Trustee's objection. The Modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 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 Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

25. [15-23258](#)-E-13 **MOSES/PATRICIA MERCADO**
BLG-2 **Chad Johnson**

**MOTION FOR COMPENSATION BY
THE LAW OFFICE OF BANKRUPTCY
LAW GROUP, PC FOR CHAD M.
JOHNSON, DEBTORS' ATTORNEY(S)**
11-22-16 [71]

Final Ruling: No appearance at the December 20, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on November 22, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance of Professional Fees is granted.

Bankruptcy Law Group, PC, the Attorney ("Applicant") for Moses Mercado and Patricia Mercado, the Chapter 13 Debtor("Client"), makes a Request for the Additional Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period December 7, 2015, through November 10, 2016. Applicant requests fees in the amount of \$2,870.00 and costs in the amount of \$37.10.

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). 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.

Benefit to the Estate

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' Committee 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 as 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] without considering the maximum probable [as opposed to possible] recovery.” *Id.* at 958. According 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?

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including pursuing a modified plan after the debtors separated and defaulted under their plan, leading to a Trustee's Motion to Dismiss. The court finds the services were beneficial to the Client and bankruptcy 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. 70. Applicant prepared the order confirming the Plan.

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). He 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. In the Ninth Circuit, the customary method for determining the reasonableness of a professional’s fees is the “lodestar” calculation. *Morales v. City of San Rafael*, 96 F.3d 359, 363 (9th Cir. 1996), *amended*, 108 F.3d 981 (9th Cir. 1997). “The ‘lodestar’ is calculated by multiplying the number of hours the prevailing party reasonably expended on the litigation by a reasonable hourly rate.” *Morales*, 96 F.3d at 363 (citation omitted). “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 County 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.

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.

Case Administration: Applicant spent 2.0 hours in this category. Applicant communicated with Client regarding the changed circumstances and did not charge for the time.

Motion to Modify Plan (BLG-1): Applicant spent 11.8 hours in this category. Applicant assisted Client with preparing and seeking confirmation of a modified plan.

Motion to Dismiss (DPC-1): Applicant spent 0.7 hours in this category. Applicant assisted Client with responding to the Trustee’s Motion to Dismiss and did not charge for the time.

Motion for Compensation (BLG-2): Applicant spent 1.0 hours in this category. Applicant prepared the instant Motion and did not charge for the time.

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
Bankruptcy Law Group, PC	15.5 hours	\$85.00–\$350.00	\$2,870.00
Total Fees For Period of Application			\$2,870.00

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$37.10 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
364 Pages for Service of Motion to Modify Plan	\$0.05	\$18.20
28 Postage for Service of Motion to Modify Plan	\$0.68	\$18.90
Total Costs Requested in Application		\$37.10

FEES AND COSTS & EXPENSES ALLOWED

Fees

The unique facts surrounding the case, including having to pursue a modified plan after the debtors separated and defaulted, raise substantial and unanticipated work for the benefit of the estate, Debtor, and parties in interest. The court finds that the hourly rates reasonable and that Applicant

effectively used appropriate rates for the services provided. Request for Additional Fees in the amount of \$2,870.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

Costs and Expenses

The Costs in the amount of \$37.10 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

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

Fees	\$2,870.00
Costs and Expenses	\$37.10

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

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

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

The Motion for Allowance of Fees and Expenses filed by Bankruptcy Law Group, PC (“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 Bankruptcy Law Group, PC is allowed the following fees and expenses as a professional of the Estate:

Bankruptcy Law Group, PC, Professional Employed by Chapter 13 Debtor

Fees	\$2,870.00
Costs and Expenses	\$37.10

The Fees and Costs pursuant to this Applicant are approved as final fees and costs pursuant to 11 U.S.C. § 330.

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

26. [16-26860-E-13](#)
DPC-1

MICHAEL/BERNADETTE
AMBERS
Lucas Garcia

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
11-23-16 [28]

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on November 23, 2016. 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). The Debtor, Creditors, the 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 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 Objection to Confirmation of Plan is sustained/overruled.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that Michael Ambers and Bernadette Ambers may be able to complete the Plan in fewer than sixty months because Debtor Bernadette Ambers is a party to an inheritance (reported on Schedule B) that is in a pending trust settlement.

At the Meeting of Creditors, Debtor explained that some of the trust's property was recently sold for \$850,000.00. The estate passes to Debtor's mother's six children—one of whom was removed from her will. The removed child is expected to contest the will. If he does not, then Debtor would be entitled to a one-fifth share of the sale proceeds after costs.

The Trustee requests that Debtor pay a lump sum sufficient to complete the Plan and avoid delayed payments to creditors.

The Trustee's objection is well-taken. If Debtor receives a substantial inheritance that has already been listed on Schedule B, then Debtor should propose a lump sum to finish the Plan and avoid prejudicial treatment of creditors. Debtor must provide for this asset and its value in the Plan.

At the hearing, Debtor amended the Plan to provide with respect to this possible asset that
~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~.

The Plan ~~does not~~ comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is ~~overruled/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 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 confirmation of the Plan is ~~sustained/overruled~~, and the proposed Chapter 13 Plan, ~~as amended to provide XXXXXXXXX~~, ~~is not~~ confirmed. ~~Counsel for the Debtor shall prepare and forward to the Chapter 13 Trustee a proposed order confirming the Plan, stating the above amendment, which upon approval by the Trustee shall be lodged with the court.~~

27. [16-26664-E-7](#)
DPC-1

SHELLY SCHNEIDER
Gabriel Liberman

**OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
11-23-16 [33]**

Final 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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor’s Attorney on November 23, 2016. 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). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

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

The Objection to Confirmation of Plan is overruled as moot.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that it does not provide all of Shelly Schneider’s (“Debtor”) projected disposable income, specifically because Debtor’s 2016 tax expense appears to be lower than reported on the Schedules.

On November 23, 2016, Debtor filed an Ex Parte Application to Convert Case to Chapter 7. Dckt. 37. Now that the case has been converted, there is no applicable plan for the Trustee to raise objections. The Objection is overruled as moot.

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

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

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, this bankruptcy case having been converted to one under Chapter 7, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is overruled as moot, the case having been converted voluntarily to one under Chapter 7.

28. [16-23267](#)-E-13 **GEORGE NJENGE AND RACHEL OBJECTION TO CLAIM OF INTERNAL
DRE-3 EKINDESONE REVENUE SERVICE, CLAIM
 D. Randall Ensminger NUMBER 2
 11-15-16 [72]**

**CASE DISMISSED:
11/19/2016**

Final Ruling: No appearance at the December 20, 2016 hearing is required.

The case having previously been dismissed, the Objection is overruled as moot.

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

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

The Objection to Claim of Internal Revenue Service having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled without prejudice as moot, the case having been dismissed.

29. [16-26768](#)-E-13 GREG/LISA DICKERSON
DPC-1 Susan Dodds

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
11-16-16 [31]

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor’s Attorney on November 16, 2016. 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). The Debtor, Creditors, the 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 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 Objection to Confirmation of Plan is overruled.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that it relies on a pending Motion to Value Secured Claim of Capital One Auto Finance, which was set for hearing on November 22, 2016. If it is not granted, then Greg Dickerson and Lisa Dickerson (“Debtor”) will not be able to afford plan payments.

DEBTOR’S REPLY

Debtor filed a Reply on November 28, 2016. Dckt. 39. Debtor states that the Motion to Value Secured Claim has been filed and is being heard on December 20, 2016. Debtor anticipates that it will be granted.

DISCUSSION

A review of the docket shows that a Motion to Value Secured Claim of Capital One, N.A. has been scheduled for hearing on December 20, 2016. *See* Dckts. 35 & 36. The court has granted that motion, although in an amount \$388.00 higher than requested by Debtor. Debtor's plan payments would need to increase by \$6.47.

At the hearing, Debtor agreed to amend the Plan and increase the plan payment by \$6.47 in the order confirming the Plan.

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 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, Debtor's Chapter 13 Plan filed on October 11, 2016, is confirmed. Counsel for the 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.

30.

16-26768-E-13
SJD-2

GREG/LISA DICKERSON
Susan Dodds

MOTION TO VALUE COLLATERAL OF
CAPITAL ONE, N.A.
11-28-16 [35]

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

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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, and Office of the United States Trustee on November 28, 2016. By the court’s calculation, 22 days’ notice was provided. 14 days’ notice is required.

The Motion to Value Secured Claim was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the 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 secured claim of Capital One, N.A. (“Creditor”) is granted, and the secured claim is determined to have a value of \$6,942.00.

The Motion filed by Greg Dickerson and Lisa Dickerson (“Debtor”) to value the secured claim of Capital One, N.A. (“Creditor”) is accompanied by Debtor’s declaration. Debtor is the owner of a 2013 Ford Focus S (“Vehicle”). The Debtor seeks to value the Vehicle at a replacement value of \$6,554.00 as of the petition filing date. As the owner, the 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).

TRUSTEE’S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on December 6, 2016. Dckt. 44. The Trustee states that Debtor has not provided any information about the vehicle and has not explained how a \$6,554.00 valuation was reached.

The Trustee notes that Capital One Auto Finance filed a proof of claim on October 27, 2016 (Claim No. 1), regarding a 2013 Ford Focus Sedan 4D SE for \$11,655.96, where \$8,246.00 is secured and \$3,409.96 is unsecured. Capital One values the Vehicle at \$8,246.00.

DISCUSSION

Creditor filed an Amended Proof of Claim on December 14, 2016, in which it asserts a claim of \$11,655.96 for a 2013 Ford Focus Sedan 4D S I4. The Vehicle is valued at \$6,942.00, which matches the portion of the claim that Creditor asserts is secured.

The lien on the Vehicle's title secures a purchase-money loan incurred in August 25, 2013, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$11,776.00. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$6,942.00. *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 for Valuation of Collateral filed by Greg Dickerson and Lisa Dickerson ("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 Capital One, N.A. ("Creditor") secured by an asset described as 2013 Ford Focus S ("Vehicle") is determined to be a secured claim in the amount of \$6,942.00, 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 \$6,942.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

31. [14-32371](#)-E-13
SDH-2

JAMES/MONA STILES
Scott Hughes

**MOTION FOR COMPENSATION FOR
SCOTT D. HUGHES, DEBTORS'
ATTORNEY
11-14-16 [51]**

Final Ruling: No appearance at the December 20, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 14, 2016. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance of Professional Fees is granted.

Scott Hughes, the Attorney ("Applicant") for James Stiles and Mona Stiles, the Chapter 13 Debtor("Client"), makes a Request for the Additional Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period August 9, 2016, through November 14, 2016. Applicant requests fees in the amount of \$1,987.50 and costs in the amount of \$18.52.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on December 6, 2016, in which he asserts no opposition to the request for additional fees. Dckt. 56.

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). 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.

Benefit to the Estate

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' Committee 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 as 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] without considering the maximum probable [as opposed to possible] recovery.” *Id.* at 958. According 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?

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including proposing a modified plan in response to the Trustee's Motion to Dismiss. The court finds the services were beneficial to the Client and bankruptcy 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)."

Section 2.06 of the Modified 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. 31. Applicant prepared the order confirming the Plan.

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). He 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. In the Ninth Circuit, the customary method for determining the reasonableness of a professional's fees is the "lodestar" calculation. *Morales v. City of San Rafael*, 96 F.3d 359, 363 (9th Cir. 1996), *amended*, 108 F.3d 981 (9th Cir. 1997). "The 'lodestar' is calculated by multiplying the number of hours the prevailing party reasonably expended on the litigation by a reasonable hourly rate." *Morales*, 96 F.3d at 363 (citation omitted). "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 County 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.

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.

Motion to Dismiss: Applicant spent 1.3 hours in this category. Applicant assisted Client with responding to the Trustee's motion.

Motion to Modify Plan: Applicant spent 4.0 hours in this category. Applicant assisted Client with preparing and seeking confirmation of a modified plan.

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
Scott Hughes	5.3 hours	\$375.00	\$1,987.50
Total Fees For Period of Application			\$1,987.50

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$18.52 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Postage		\$18.52
Total Costs Requested in Application		\$18.52

FEES AND COSTS & EXPENSES ALLOWED

Fees

The unique facts surrounding the case, including responding to the Trustee’s Motion to Dismiss and proposing a modified plan, raise substantial and unanticipated work for the benefit of the estate, Debtor, and parties in interest. The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. Request for Additional Fees in the amount of \$1,987.50 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

Costs and Expenses

The Costs in the amount of \$18.52 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

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

Fees	\$1,987.50
Costs and Expenses	\$18.52

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

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

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

The Motion for Allowance of Fees and Expenses filed by Scott Hughes (“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 Scott Hughes is allowed the following fees and expenses as a professional of the Estate:

Scott Hughes, Professional Employed by Chapter 13 Debtor

Fees	\$1,987.50
Costs and Expenses	\$18.52

The Fees and Costs pursuant to this Applicant are approved as final fees and costs pursuant to 11 U.S.C. § 330.

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

32. [14-23972-E-13](#) **THOMAS BURGESS AND** **MOTION TO MODIFY PLAN**
NBC-2 **PATRICIA VIRDEN** **10-26-16 [55]**
 Eamonn Foster

Final Ruling: No appearance at the December 20, 2016 hearing is required.

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

Correct 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 26, 2016. By the court’s calculation, 55 days’ notice was provided. 35 days’ notice is required.

The Motion to Confirm the 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. Thomas Burgess and Patricia Virden (“Debtor”) filed evidence in support of confirmation. David Cusick, the Chapter 13 Trustee, filed a statement of non-opposition on December 6, 2016. Dckt. 65. 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 Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtor’s Chapter 13 Plan filed on October 26, 2016, is confirmed. Counsel for the 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.

33. [15-27773-E-13](#) **KATE KERNER** **MOTION TO INCUR DEBT**
PGM-1 **Peter Macaluso** **12-6-16 [44]**

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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 6, 2016. By the court’s calculation, 14 days’ notice was provided. 14 days’ notice is required.

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

The Motion to Incur Debt is denied.

The motion seeks permission for Kate Kerner (“Debtor”) to purchase a 2014 BMW or a vehicle of comparable value. The total financing (post-petition credit) obtained by Debtor shall not to exceed \$19,700.00, and the monthly payments are not to exceed \$457.59. The interest rate for this post-petition credit is not to exceed 18.74% interest. FN.1.

FN.1. While the Motion states that Debtor seeks to buy a 2014 BMW, the model of the vehicle is not identified in the Motion. Dckt. 44. In her declaration, Debtor makes reference to a 2014 BMW, but never states the model she seeks to purchase. Dckt. 46. On Exhibit A, identified by Debtor and Debtor’s Counsel as the “Santander Pre-approval,” the vehicle is identified as a “2014 328i RWD.” Dckt. 47. However, on

what is identified as the “Purchase Contract,” the vehicle is described as a “2013 320L.” Exhibit B, *Id.* The court cannot tell what vehicle the is purporting to want to purchase.

Debtor asserts that she has saved \$5,800.00 toward the purchase of a vehicle now that her last vehicle’s lease expired on November 3, 2016. These savings “are explained as coming from “contract payments [Debtor] received in October 2016,” as well as a payment for a “short-term contract Debtor is to receive the first week of November 2016. Declaration, ¶ 3; Dckt. 46. At this juncture the court notes that the October and November 2016 “payments” are what appear to be part of Debtor’s regular monthly income of \$9,000. Debtor does not provide any testimony that she has had more than \$9,000.00 of income in October and November 2016. Thus, it is not clear how Debtor has “saved” more 50% of her gross income for a month to be able to make this payment. Either Debtor’s stated expenses are not accurate, or Debtor’s actual monthly income is greater than stated by Debtor on Schedules I and J.

Review of Motion and Supporting Evidence

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, “including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions.” Fed. R. Bankr. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

The Debtor does not address the reasonableness of incurring debt to purchase a luxury vehicle, even one that is used, while seeking the extraordinary relief under Chapter 13 to discharge debts. The Debtor leased her previous vehicle and now requests to borrow so that she may purchase a vehicle.

Here, the transaction is not best interest of the Debtor. The loan calls for a substantial interest charge—18.74%. Moreover, it is unclear to the court how in good faith the Debtor could propose to purchase a luxury car when paying holders of unsecured claims nothing. A debtor driven to seek the extraordinary relief available under the Bankruptcy Code is hard pressed to provide a good faith explanation as to how a “reward” for filing bankruptcy is to purchase a luxury car and attempt to borrow money at an 18.74% interest rate.

Presumably, which Debtor’s counsel has prepared the motion and supporting pleadings, he has already advised his client that the anticipated court response will be to deny the Motion. The court recognizes that some clients are not convinced by an attorney’s opinion of a request such as this, and the client must actually hear it from the man or woman in the black robe who carries a gavel to work.

In this case, the “poor” debtor has confirmed a Chapter 13 Plan in which she can only eke out enough money to make a plan payment that pays her attorney, make a month payment to cure the \$18,000.00 on the claim secured by her home, the \$1,500.00 a month monthly mortgage payment, make her then \$616 a month BMW lease payment, and pay \$5,800 in priority tax claims. Debtor, after funding the above, has nothing to make any dividend for payment to creditors holding more than \$40,000.00 (amount stated in Chapter 13 Plan) in general unsecured claims.

On Schedule I Debtor stated under penalty of perjury she receives monthly draws of \$4,266.49 from her limited liability company for her work as a political consultant. Dckt. 10 at 24. In addition to receiving the monthly income from being *employed* as a political consultant, Debtor states that she also receives \$1,875.00 in *unemployment* benefits. *Id.* Schedules I does not disclose how Debtor is employed and collecting unemployment benefits.

In support of the current Motion Debtor provides new testimony under penalty of perjury of her business income. It has now grown to \$9,750.00 a month. Exhibit C, Dckt. 47. Debtor uses the Schedule I form, listing the \$9,750.00 as the *net* income from business. No statement showing the gross income and the expenses of Debtor to reach this *net* number. With this larger income, Debtor's expenses have exploded from the \$3,941 a month as stated under penalty of perjury on Schedule J (Dckt. 10) to \$7,250.00 on what Debtor now states under penalty of perjury as her reasonable and necessary expenses. Exhibit D, Dckt. 47, using the Schedule J form.

Some of the restating expenses on Exhibit D by Debtor include: [1] (\$1,900) for 1099 employee expenses (none stated on Original Schedule J); [2] (\$700) for travel and entertainment (none stated on Original Schedule J); [3] (\$461) for a vehicle payment ((\$616) shown for the BMW lease on Original Schedule J); [4] (\$1,366) for taxes ((\$791) stated on Original Schedule J); [5] (\$500) for food and housekeeping supplies ((\$400) stated on Original Schedule J); and [6] (\$170) for home maintenance expenses ((\$100) stated on Original Schedule J).

While saying under penalty of perjury that Exhibits C and D are accurate, truthful statement of Debtor's income and expenses, Debtor offers no explanation as to why the statements under penalty of perjury on Original Schedules I and J are not accurate. When a person gives conflicting testimony under penalty of perjury, an explanation is required for the court to determine which statements under penalty of perjury (if any) are accurate and truthful.

The court is not persuaded by Debtor's justification for purchasing a BMW:

"7. I understand that this vehicle purchase may be considered a luxury. I need to purchase this particular vehicle because my job, much like a realtor, often necessitates that I transport current and prospective clients in my vehicle, which in either business is indicative of my level of success, and not having a similar vehicle may directly impact my finances and overall success with current clients and those I am courting."

Declaration, ¶ 7; Dckt. 46. The court has not been shown that "courting clients" and working with clients requires that such clients be misled that the Debtor, who is in bankruptcy, can afford to drive a BMW to show that she can be an effective political consultant. Rather, this appears to be an insufficient justification for Debtor desiring to live a lifestyle which she was not able to and cannot now afford. When coupled with the unexplained dramatic increase in income and the corresponding expenses, to apparently justify why Debtor can only make a 0.00% dividend to creditors holding general unsecured claims indicates that Debtor's testimony generally is not credible. Further, that the income and expense statements under penalty of perjury are inaccurate, having been reverse engineered to "evidence" Debtor's preconceived "plan" for paying creditors with general unsecured claims \$0.00 in a Chapter 13 case.

While Debtor is pleased that she has been able to reduce the interest rate for the loan to 18.74%, that does not make it reasonable. In being quoted such a rate, lenders are “betting” that Debtor will default and they will have to take this car back and sell it at an auto auction.

In looking at the other exhibits provided by Debtor, the court first reviews the Santander Pre-Approval. Exhibit A, Dckt. 47. On this form, the lender says the book/invoice value for the vehicle is \$18,843, if it is a 2014 BMW 328i. If it is a 2013 or 2014 BMW 320i, the value will be even less, given it is commonly known as the BMW 320i is a less valuable car than the 328i model. It further states that Debtor states her monthly income to be \$9,000.00.

Exhibit B is stated to be the “Purchase Contract.” *Id.* This does not appear to be a “contract,” but merely a summary sheet of the terms of the purchase. First, the sales price of the vehicle is stated to be \$22,786. This is 21% higher than Santander states is the book/invoice value of the vehicle. It appears that Debtor is willing to pay (or have her creditor’s pay) a 21% premium so she can drive a BMW.

The Debtor’s financial information is not sound. Debtor’s justifications for purchasing a BMW are not sound. The financial terms are not merely improvident, but so financially unsound that they indicate that Debtor may be unable to perform any plan in this case.

The Motion is denied.

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

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

The Motion to Incur Debt filed by 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 denied.

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.

Correct 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 November 29, 2016. By the court’s calculation, 21 days’ notice was provided. 21 days’ notice is required. (Fed. R. Bankr. P. 2002(a)(2), 21 day notice.)

The Motion to Sell Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the 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 Sell Property is granted.

The Bankruptcy Code permits the Chapter 13 Debtor (“Movant”) to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the real property commonly known as 613 Mcdevitt Drive, Wheatland, California (“Property”).

The proposed purchasers of the Property are Jeff Claytor and Michelle Claytor, and the terms of the sale are:

- A. Purchase price of \$245,000.00
- B. Each of Movant’s and Purchaser’s brokers will receive a commission in the amount of \$6,125.00.
- C. Wells Fargo Bank, N.A., holder of a first mortgage, will receive an estimated \$89,338.00, which is the principal balance stipulated to in a related adversary proceeding.

D. The sale will generate an excess of \$139,934.98.

Additionally, Movant requests that the brokers' commissions and Wells Fargo be paid directly from escrow. Movant also requests that \$20,000.00 be paid to the Trustee to cover all claims and fees outstanding.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on December 6, 2016. Dckt. 191. The Trustee does not oppose the Motion, including its requests for payment to the Trustee.

WELLS FARGO'S NON-OPPOSITION

Wells Fargo Bank, N.A., filed a non-opposition on December 9, 2016. Dckt. 195. Wells Fargo states that it will fully cooperate with producing an updated payoff demand to ensure that the sale is closed timely.

DISCUSSION

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate.

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 Sell Property filed by Jack Ganas and Linda Ganas, the Chapter 13 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 Jack Ganas and Linda Ganas, the Chapter 13 Debtor, are authorized to sell pursuant to 11 U.S.C. § 363(b) to Jeff Claytor and Michelle Claytor or nominee ("Buyer"), the Property commonly known as 613 Mcdevitt Drive, Wheatland, California ("Property"), on the following terms:

1. The Property shall be sold to Buyer for \$245,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 189, and as further provided in this Order.
2. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other

customary and contractual costs and expenses incurred in order to effectuate the sale.

3. The Chapter 13 Debtor be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.
4. The Chapter 13 Debtor be and hereby is authorized to pay a real estate broker's commission in an amount equal to \$6,125.00 of the actual purchase price upon consummation of the sale. A \$6,125.00 commission shall be paid to the Chapter 13 Debtor's broker, American Home Real Estate, and a six percent commission shall be paid to the Purchaser's broker, Better Home and Gardens Real Estate.
5. Wells Fargo Bank, N.A., shall be paid directly from escrow an amount of \$89,338.00 in satisfaction of the principal balance of its claim.
6. David Cusick, the Chapter 13 Trustee, shall be paid directly from escrow an amount of \$20,000.00 in satisfaction of outstanding claims and fees in this case.
7. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtor. Within fourteen days of the close of escrow the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.

35.

[14-23175-E-13](#)
ALF-1

MELVIN/DEBORAH FRYE
Ashley Amerio

MOTION TO INCUR DEBT
11-18-16 [26]

Tentative Ruling: The Motion to Incur Debt has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 18, 2016. By the court’s calculation, 32 days’ notice was provided. 28 days’ notice is required.

The Motion to Incur Debt 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 Incur Debt is granted.

The motion seeks permission to purchase real property commonly known as 6820 Madison Avenue, Fair Oaks, California, which the total purchase price is \$361,539.00, with monthly payments of \$2,152.54 to Vitek Real Estate Industries Group, Inc. dba Vitek Mortgage Group.

TRUSTEE’S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on December 6, 2016. Dckt. 31. The Trustee does not oppose the Motion.

DISCUSSION

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, “including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions.” Fed. R. Bankr. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

Review of Bankruptcy Case

This bankruptcy case was filed on in March 2014. The confirmed Chapter 13 Plan requirement monthly plan payments of \$1,812.00 for sixty months. Plan, Dckt. 5. The Plan provides for a \$1,131.94 payment for the claim secured by Debtor’s 2011 vehicle and a \$458.43 for Debtor’s timeshare. Class 2 Claims, Plan, p. 3; *Id.* Debtor is also paying \$17,000 in priority tax claims, and a 100% dividend to creditors holding general unsecured claims. Class7, Plan, p. 4; *Id.* As discussed herein, the plan terms and how creditors’ claims are being treated is very relevant to Debtor requesting authorization to take on such new debt. While Debtor and Debtor’s counsel neglected to provide the court with this information as part of the grounds in support of the requested relief, the court on it’s own initiative has reviewed this case and the relevant information.

In this bankruptcy case Debtor has providing for paying all of the debts in full. Though general unsecured claims may be delayed, they will be paid in full. Debtor is not seeking to amend the plan or reduce the payments to creditors. Debtor has elected to reallocate the current expense money to be able to purchase the property. Though not stated in the Motion nor in the declaration in support (Dckt. 28), the court notes that it is commonly known that a home owner may deduct the interest portion of the mortgage payment and property taxes. This may help the Debtor in restructuring the existing expenses and increase monthly cash flow to cover the additional expenses.

The court notes that the Motion fails to disclose the terms of the requested financing. The Motion only states that Debtor wants to borrow \$362,539 to purchase the house and the monthly payment will be \$2,152.54. Hidden from the court are the terms, including the interest rate. Debtor’s declaration does not provide any more information. Buried at the end of Exhibit 2, the Vitek Mortgage “Estimate of Fees” is the information that the loan is a 30-year loan with a 3.50% interest rate. This is a VA 100% purchase loan.

Though the court could deny the Motion without prejudice due to the failure to comply with the basic pleading requirements (Fed. R. Bankr. P. 4001(c), 9013), the ensuing delay could well result in Debtor losing the loan, losing the loan terms, or losing the right to purchase the property. Such delay, while causing harm to Debtor would also cause significant financial harm to Debtor’s counsel. In light of the plan terms and the court having some idea of the proposed financing, the court will rule on the merits of the Motion.

However, counsel should not consider this to be a green light to file inadequate pleadings and offload counsel’s work to the court. If counsel should desire to file a motion for requesting legal fees for the present motion, the court will remember (and anticipates that the Chapter 13 Trustee and the U.S.

Trustee will remember) these deficient pleadings. If such a motion is filed, counsel for Debtor needs to preemptively address the court's concerns and identified deficiencies in these pleadings.

Granting of Motion

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

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

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

The Motion to Incur Debt filed by 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 Melvin Frye and Deborah Frye ("Debtor") are authorized to incur debt pursuant to the terms of the agreement, Exhibit 2, Dckt. 29.

36. [16-26475](#)-E-13 **LOUIS/LYDIA CAMPOS**
DPC-1 **Douglas Jacobs**

**OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK**
11-16-16 [25]

Final Ruling: No Appearance at the December 20, 2016 Hearing is Required.

Below is the court's ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney on November 16, 2016. 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). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

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

The Objection to Confirmation of Plan is overruled.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that the Plan relies on a pending Motion to Value Secured Claim of Cenlar, which was set for hearing on December 6, 2016. Without the Motion to Value being granted, Louis Campos and Lydia Campos ("Debtor") cannot afford to make plan payments.

DEBTOR'S RESPONSE

Debtor filed a Response on December 6, 2016. Dckt. 34. Debtor states the underlying Motion to Value Secured Claim was withdrawn when Debtor realized that the holder of a second deed of trust on the property had not been properly named. Debtor is in the process of refile that motion. Debtor requests that this Objection be continued until after the hearing on the Motion to Value Secured Claim.

DISCUSSION

A review of the docket shows that the court entered an order regarding the Motion to Value Secured Claim of Cenlar on December 12, 2016. Dckt. 38. The court granted that Motion and determined that Cenlar was secured by a second in priority deed of trust with a secured claim in the amount \$0.00. With that Motion being granted, the Trustee's Objection has been satisfied. The Objection is overruled, and the Chapter 13 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 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, Debtor's Chapter 13 Plan filed on September 29, 2016, is confirmed. Counsel for the 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.

37. [16-26177-E-13](#) **MICHAEL/PAULA NEHER**
EAT-1 **Douglas Jacobs**

**OBJECTION TO CONFIRMATION OF
PLAN BY WELLS FARGO FINANCIAL
CALIFORNIA, INC.**
11-2-16 [17]

Final Ruling: No appearance at the December 20, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, and Office of the United States Trustee on November 2, 2016. By the court’s calculation, 48 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). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

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

The Objection to Confirmation of Plan is sustained.

Wells Fargo Financial California, Inc., a creditor with a secured claim, opposes confirmation of the Plan on the basis that Michael Neher and Paula Neher’s (“Debtor”) plan does not include the total arrearage amount and because the ongoing post-petition payment is stated in correctly.

Creditor asserts that it holds a first deed of trust that encumbers Debtor’s property with pre-petition arrearage of \$150,812.58 and post-petition payments of \$2,289.70. Class 1 of the Plan provides for Creditor’s claim in the amount of \$130,494.00 with post-petition payments of \$1,675.00. Therefore, Creditor asserts that the Plan does not comply with 11 U.S.C. §§ 1322(b)(5) and 1325(a)(6).

DEBTOR’S RESPONSE

Debtor filed a Response on December 6, 2016. Dckt. 24. Debtor states that there is no basis to disagreement with Creditor’s position. Accordingly, Debtor seeks the court’s leave to file a first amended plan that will provide for the payment of all of the arrears owed to Creditor. Debtor requests that the Plan not be confirmed.

DISCUSSION

The Creditor's objections are well-taken. The objecting creditor asserts a claim of \$150,812.58 in this case. The Debtor's Schedule D, estimates the amount of the creditor's claim as \$270,000.00. Dckt. 11. The Plan provides for treatment of this as a Class 1 claim, but Debtor listed an arrearage of \$130,494.00.

The creditor first alleges that the plan is not feasible and violates 11 U.S.C. § 1322(b)(2) because it does not provide for full payment of the creditor's matured obligation, which is secured by the Debtor's residence. *See* 11 U.S.C. § 1325(a)(6)

11 U.S.C. § 1322(a) is the section of the Bankruptcy Code that specifies the mandatory provisions of a plan. It requires only that the Debtor adequately fund the plan with future earnings or other future income that is paid over to the Trustee, 11 U.S.C. § 1322(a)(1), provide for payment in full of priority claims, 11 U.S.C. § 1322(a)(2) & (4), and provide the same treatment for each claim in a particular class, 11 U.S.C. § 1322(a)(3). Nothing in § 1322(a) compels a debtor to propose a plan that provides for a secured claim.

11 U.S.C. § 1322(b) specifies the provisions that a plan may include at the option of the debtor. With reference to secured claims, the debtor may not modify a home loan but may modify other secured claims, 11 U.S.C. § 1322(b)(2), cure any default on a secured claim, including a home loan, 11 U.S.C. § 1322(b)(3), and maintain ongoing contract installment payments while curing a pre-petition default, 11 U.S.C. § 1322(b)(5).

If a debtor elects to provide for a secured claim, 11 U.S.C. § 1325(a)(5) gives the debtor three options:

- (1) provide a treatment that the debtor and secured creditor agree to, 11 U.S.C. § 1325(a)(5)(A),
- (2) provide for payment in full of the entire claim if the claim is modified or will mature by its terms during the term of the Plan, 11 U.S.C. § 1325(a)(5)(B), or
- (3) surrender the collateral for the claim to the secured creditor, 11 U.S.C. § 1325(a)(5)(C).

However, these three possibilities are relevant only if the plan provides for the secured claim.

Here, Debtor has provided for Creditor's claim and has not indicated that it will surrender the property. Additionally, Creditor's claim will mature on October 12, 2016, outside of the terms of the Plan. Therefore, Creditor and Debtor must agree to the treatment in the Plan. Creditor has objected, and Debtor has agreed with Creditor and has requested that the current plan not be confirmed. This is reason to sustain the 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 Creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

38. [13-26582-E-13](#) **VENIAMIN FURSOV AND ALLA FURSOVA-TIMOFEYEVA** **MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTORS' ATTORNEY**
PGM-2 **Peter Macaluso** **11-11-16 [66]**

Final Ruling: No appearance at the December 20, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on November 11, 2016. By the court's calculation, 39 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance of Professional Fees is granted.

Peter Macaluso, the Attorney ("Applicant") for Veniamin Fursov and Alla Fursova-Timofeyeva, the Chapter 13 Debtor, ("Client"), makes a Request for the Additional Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period September 12, 2014, through December 2, 2014. Applicant requests fees in the amount of \$1,425.00.

TRUSTEE'S NON-OPPOSITION

David Cusick, the Chapter 13 Trustee, entered a statement of non-opposition on November 18, 2016.

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). 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.

Benefit to the Estate

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' Committee 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 as 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] without considering the maximum probable [as opposed to possible] recovery.” *Id.* at 958. According 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?

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including responding to the Trustee’s Motion to Dismiss and proposing a modified plan. The court finds the services were beneficial to the Client and bankruptcy 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)."

Section 2.06 of the Modified 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. 53. Applicant prepared the order confirming the Plan.

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). He 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. In the Ninth Circuit, the customary method for determining the reasonableness of a professional's fees is the "lodestar" calculation. *Morales v. City of San Rafael*, 96 F.3d 359, 363 (9th Cir. 1996), *amended*, 108 F.3d 981 (9th Cir. 1997). "The 'lodestar' is calculated by multiplying the number of hours the prevailing party reasonably expended on the litigation by a reasonable hourly rate." *Morales*, 96 F.3d at 363 (citation omitted). "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 County 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.

FEES REQUESTED

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

Motion to Dismiss: Applicant spent 1.45 hours in this category. Applicant assisted Client with reviewing the Trustee’s Motion to Dismiss and formulating a plan to address it.

Motion to Modify Plan (PGM-1): Applicant spent 3.30 hours in this category. Applicant assisted Client with preparing and seeking confirmation of a modified plan.

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
Peter Macaluso	4.75 hours	\$300.00	\$1,425.00
Total Fees For Period of Application			\$1,425.00

FEES ALLOWED

The unique facts surrounding the case, including responding to a Motion to Dismiss and seeking confirmation of a modified plan, raise substantial and unanticipated work for the benefit of the estate, Debtor, and parties in interest. The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. Request for Additional Fees in the amount of \$1,425.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

Applicant is allowed, and the 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 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 Peter Macaluso (“Applicant”), Attorney having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Peter Macaluso, Professional Employed by Chapter 13 Debtor

Fees \$1,425.00

The Fees and Costs pursuant to this Applicant are approved as final fees and costs pursuant to 11 U.S.C. § 330.

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

Tentative Ruling: The Motion to Modify Plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on November 1, 2016. By the court's calculation, 49 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the 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 denied.

11 U.S.C. § 1329 permits a trustee to modify a plan after confirmation. David Cusick, the Chapter 13 Trustee, seeks to modify Troy McComas and Teri McComas's ("Debtor") confirmed plan to increase plan payments by an \$11,000.00 lump sum paid previously by Debtor, to obtain current Schedules I & J from Debtor, to provide for an accounting of life insurance proceeds received by Debtor, to attempt to recover any avoidable transfers Debtor made with life insurance proceeds, and to recover any remaining life insurance proceeds from Debtor if their expenditure has not been identified.

The Trustee brought this Motion because Debtor Teri McComas died on September 16, 2014, and Debtor's motion seeking omnibus relief was denied. The Plan is now in the sixtieth month, and the Trustee seeks to modify it.

The confirmed plan provides \$900.00 per month for sixty months and no less than 35% to unsecured claims. The modified plan proposes \$900.00 per month for sixty months plus a lump sum payment of \$11,000.00 in the fifty-eighth month with no less than 40% to unsecured claims.

DEBTOR'S RESPONSE AND DECLARATION

Debtor filed a Reply on December 6, 2016, in which Debtor requests that the Motion be granted, thus confirming the modified plan. Dckt. 101. Debtor also filed a supporting declaration. Dckt. 102. Debtor states that after his wife died, he received \$216,000.00 in insurance benefits, which he then spent. He claims to have spent it all on cars, clothes, food, gambling, vacations, family, friends, dating sites, gifts to family and friends, furniture, house remodeling, new air conditioning and furnace, repairing and painting used cars, fixing and buying new tires for three cars, purchasing three new big screen television sets, and other miscellaneous items.

Debtor asserts that his former attorney did not advise him that money he received belongs to the court.

DISCUSSION

Despite Debtor admitting to wrongdoing, the Trustee has proposed a modified plan that seeks to "resolve" the plan defaults in the sixtieth month. The proposed plan provides for only a 35% dividend to creditors holding \$137,000 of general unsecured claims, notwithstanding the estate having received \$216,000.00 in insurance proceeds that have been improperly diverted by Debtor.

Debtor's current counsel offers a reply, which says nothing more than "read the Debtor's declaration." Reply, Dckt. 101. Debtor's counsel provides no legal authorities or arguments why confirmation of a modified plan (as opposed to dismissal with prejudice of this case, conversion of the case to one under Chapter 7 and the Trustee pursue recovering all of the unauthorized transfers by Debtor from each of the Transferees, and the denial of a discharge for Debtor.

The two page declaration provides little in specific and is little more than a plea for leniency because of his loss. Dckt. 102. The court can only begin to imagine the loss of a spouse. However, Debtor uses this as a license to live a riotous life, disregard his legal obligations, and then get a pass so he can obtain a discharge and walk away from his debts.

Debtor and his current counsel make a passing attempt to blame a prior unnamed attorney. Debtor places the "blame" on the attorney, stating, "It would have helped had I been advised by my previous attorney that money I received belongs to the court but he did not communicate with me during my bankruptcy." Declaration, p. 2:20-23; Dckt. 102. It appears that Debtor, in the declaration prepared by his current attorney, states under penalty of perjury that Debtor told his prior attorney that Debtor was receiving the insurance money and the attorney failed to advise Debtor what to do. It appears that Debtor is stating

that he, and the bankruptcy plan estate, has a professional liability claim against the former counsel to recover the amounts improperly diverted by Debtor.

Debtor and his current counsel do not get a pass to “blame” the prior attorney as an excuse for Debtor having improperly diverted the monies to various persons, including family members and friends.

Debtor and his attorney do not make any provision for recovering any of the improper post-petition transfers from the various transferees. In denying Debtor’s prior motion to be substituted in to represent the interests of the late debtor in connection with all the diverted monies, the court noted:

“The ‘Declaration’ also tells of \$150,000.00 of the \$200,000.00 insurance proceeds spent or given by the Surviving Debtor to others. Much of this appears to have been transactions for which there may be tangible assets for the estate or which can be recovered from family members and friends. Or the tangible assets may provide collateral for the Debtor providing a reasonable recovery for the bankruptcy estate – an estate to which the Surviving Debtor is the fiduciary. FN.1.

FN.1. Take[n] at face value, not having been stated under penalty of perjury, the “Declaration” indicates that Debtor has a \$42,000.00 pickup, \$3,500.00 gift to son, two used cars held by Debtor’s two sons (appears to have aggregate values of at least \$20,000), \$13,000.00 transfer to son, \$5,000.00 transfer to friend Surviving Debtor had “not seen for a while,” \$3,500.00 transfer to daughter, Honda in which \$5,400.00 of repairs have been made, and \$27,000.00 Mini-Cooper.

Debtor’s general unsecured claims in this case total “only” approximately \$125,000.00. One possible starting point of inquiry is a consideration that since the Plan already provides for a 35% dividend, “finding” or “recovering” \$50,000.00 (plus an additional 7% for Trustee fees) of the \$200,000 in insurance proceeds would boost the minimum dividend to 75%. While not a 100% dividend, it would provide a significant dividend for creditors with unsecured claims, not unduly disrupt the Surviving Debtor, and facially vindicate the rights, obligations, and duties under the Bankruptcy Code.

While the court recognizes the need to tread carefully under the circumstances, Debtor’s counsel can also surely recognize the need for the court to insure that this explanation cannot be seen as a signal for less scrupulous parties and fiduciaries (debtors and their attorneys) to ignore their duties and obligation, as well as the rights of the bankruptcy estates.”

Civil Minutes, p. 2-3; Dckt. 87.

Though there are substantial assets and identified transferees who should readily return the improperly paid monies and assets to get the debtor out of this mess, no attempt is proposed by Debtor or Debtor’s counsel. They happily will accept the Trustee’s proposal to let the Debtor, and the Debtor’s family and friend, keep the improper transfers.

Conduct of Debtor After Obtaining Representation by Current Attorney

While Debtor and his current counsel seek to “blame” prior counsel, Debtor’s conduct since obtaining representation by current counsel has not been any better. As discussed above, in his declaration under penalty of perjury filed on April 5, 2016, Debtor testified to there being the following assets in existence that he purchased with the improperly diverted monies:

A.	Chevy Silverado.....	\$37,000.00
B.	Add-Ons to Silverado.....	\$ 5,000.00
C.	Christmas Presents for Son.....	\$ 3,500.00 (includes big screen TVs)
D.	Cars Given to Son.....	\$11,000.00 (cost)
E.	Pay off Step-Son’s Car Loan.....	\$13,000.00
F.	“Good Friend” Loan.....	\$ 5, 000.00
G.	Payment to Daughter for Car.....	\$ 3,500.00
H.	2000 Honda (repairs).....	\$ 5,400.00
I.	2012 Mini Cooper.....	\$27,000.00
J.		

Declaration, Dckt. 78. This totals \$120,400.00 of the insurance proceeds.

From the above, it appears from the above that there is \$80,000.00 in vehicles (Silverado, Cars to Son, and 2012 Mini Cooper) which can be used to recover monies for the estate and creditors. No reason is shown why Step-Son cannot refinance his car to pay back some of the \$13,000.00 gift to pay off his car loan, nor why the “Good Friend” does not repay the \$5,000.00 loan. This is more than double the amount necessary to pay creditor claims.

The court does not include in the above the equity created in Debtor’s home from \$14,696.00 of the improperly diverted insurance proceeds to make Debtor’s mortgage payments and \$4,100.00 spent on home repairs.

Debtor now provides a new declaration, filed on December 6, 2016. Dckt. 102. He testifies that the family members he improperly diverted the money to are “at poverty level and on welfare.” He states that the family members he has given the money to tell him they “don’t have the money” to pay him back, “if they wanted to.” *Id.*, p. 2:1-4. This indicates that they “don’t want to” pay Debtor back. Additionally, Debtor says nothing about the family members giving him the “gifts” back (such as the three large screen TVs and the cars) and Debtor selling them to try and recover something to undue his improper diversions of the monies.

Debtor makes no proposal to sell the \$42,000.00 Chevrolet Silverado or the \$27,000 2012 Mini Cooper. Debtor’s attorney and Debtor apparently believes that Debtor is entitled to keep those cars. Being represented by his current counsel who has been advising Debtor since August 10, 2015, (Substitution, Dckt. 71), clearly Debtor has not disposed of these two vehicles (the Chevrolet Silverado and the Mini Cooper), the proceeds of the improperly diverted insurance proceeds. Debtor could sell the Mini Cooper and finance the Chevrolet Silverado and use the proceeds to fund his plan – if he and his counsel were in good faith trying to address the improper diversion of the insurance proceeds.

But, no such effort is made by Debtor's counsel and Debtor.

Denial of Motion

The court cannot approve such improper conduct by confirming the proposed plan. Debtor's and Debtor's counsel's failure to act, and passively acquiesce to a plan that provides nothing more than under the existing plan, would appear to merely be an effort "wash" the unauthorized transfers under color of federal law. That conduct cannot be rewarded by the court, even if the Trustee believes that (absent Debtor fulfilling his fiduciary duties and Debtor's counsel properly acting on the rights of the bankruptcy estate and Debtor) there is little more the Chapter 13 Trustee can do.

It appears that Debtor and Debtor's counsel have elected to gamble that the court will not closely look at what is happening in this case and the Debtor and his transferees can keep the misappropriated insurance proceeds. The court will not approve such abuse of the bankruptcy laws.

It is a terrible tragedy which Debtor has suffered. It is clear that Debtor and Debtor's counsel could work out a very humane, fair, compassionate resolution to these unfortunate circumstances for a debtor who in good faith was trying to "make thing rights." However, Debtor's counsel and Debtor are doing nothing to try in good faith to address this very unfortunate situation.

The Modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 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 Chapter 13 Plan filed by the 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 is granted, the Chapter 13 Plan filed on November 1, 2016, is denied

40.

16-26686-E-13
AMJ-1

BENJAMIN SANTOS
Alberto Montefalcon

MOTION TO CONFIRM PLAN
11-4-16 [18]

Final Ruling: No appearance at the December 20, 2016 hearing is required.

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

Correct 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 November 4, 2016. By the court’s calculation, 46 days’ notice was provided. 42 days’ notice is required.

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

The Motion to Confirm the Amended Plan is denied as moot.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Motion, Benjamin Santos (“Debtor”) filed a third amended plan and corresponding motion to confirm on December 1, 2016. Dckts 33 & 34. Filing a new plan is a de facto withdrawal of the pending plan. The Motion to Confirm the Amended Plan is denied 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 Motion to Confirm the Amended Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied as moot, and the proposed Chapter 13 Plan is not confirmed.

41. [16-22887-E-13](#) **RANDALL OWENS AND RYAN** **MOTION TO MODIFY PLAN**
PGM-1 **WATERS** **11-14-16 [41]**
 Peter Macaluso

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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on November 11, 2016. By the court’s calculation, 39 days’ notice was provided. 35 days’ notice is required.

The Motion to Confirm the 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 ~~XXXX~~.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

TRUSTEE’S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on December 5, 2016. Dckt. 52. The Trustee states that Randall Owens and Ryan Waters (“Debtor”) are delinquent under the proposed plan in the amount of \$525.00. \$1,265.00 has come due, and Debtor has paid \$740.00 to the Trustee.

DEBTOR’S REPLY

Debtor filed a Reply on December 13, 2016. Dckt. 55. Debtor states that \$525.00 was paid on December 12, 2016, to bring Debtor current under the Modified Plan.

DISCUSSION

The basis for the Trustee's objection is that the Debtor is \$5250.00 delinquent in plan payments, which represents one month of the \$525.00 plan payment. The delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

At the hearing, the Trustee reported that Debtor ~~has~~/~~has not~~ cured the delinquency.

The Modified Plan ~~does~~/~~does not~~ comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 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 Modified Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Modified Plan is ~~granted/denied, and the Modified Chapter 13 Plan filed on November 11, 2016, is confirmed, and counsel for the 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.~~

Final Ruling: No appearance at the December 20, 2016 hearing is required.

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

Correct 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 21, 2016. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

The Motion to Value Secured Claim of HFC Beneficial 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 Secured Claim of HFC Beneficial (“Creditor”) is granted, and the secured claim is determined to have a value of \$0.00.

The Motion to Value filed by Edward Cardoza and Susan Cardoza (“Debtor”) to value the secured claim of HFC Beneficial (“Creditor”) is accompanied by Debtor’s declaration. Debtor is the owner of the subject real property commonly known as 2156 Hope Lane, Redding, California (“Property”). Debtor seeks to value the Property at a fair market value of \$345,000.00 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).

TRUSTEE’S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on December 6, 2016, in which he asserts no opposition to the Motion. Dckt. 36.

APPLICABLE LAW

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).

No Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. No Proof of Claim has been filed by a creditor that appears to be for the claim to be valued, and Creditor has not filed any opposition to the Motion.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately \$388,127.15. Creditor's asserted second deed of trust secures a claim with a balance of approximately \$132,586.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). 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 for Valuation of Collateral filed by Edward Cardoza and Susan Cardoza (“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 HFC Beneficial secured by a second in priority deed of trust recorded against the real property commonly known as 2156 Hope Lane, Redding, California, 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. The value of the Property is \$345,000.00 and is encumbered by a senior lien securing a claim in the amount of \$388,127.15, which exceeds the value of the Property that is subject to Creditor’s lien.

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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 7, 2016. By the court's calculation, 43 days' notice was provided. 42 days' notice is required.

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.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on November 28, 2016. Dckt. 51. The Trustee states that Pranee Arend ("Debtor") cannot make plan payments under 11 U.S.C. § 1325(a)(6). Debtor's plan cures the delinquency in the original plan where payments were \$1,910.00 per month, but the amended plan calls for an eventual increase to \$1,950.00. The Trustee objects because Debtor has not explained why she became delinquent or how she will now be able to afford larger plan payments.

The Trustee states that the proposed plan also may not comply with 11 U.S.C. § 1325(a)(1). Class 1 calls for ongoing payments to Statebridge Company, LLC to cure pre- and post-petition mortgage arrears, but the Trustee cannot determine whether a monthly dividend and interest rate to post-petition arrears has been provided for in the plan.

This case was filed on August 12, 2016, with the first plan payment due on September 25, 2016. The proposed amended plan adds two post-petition mortgage payments for October and November 2016,

but Debtor has not indicated whether she paid a mortgage payment for September. If not, then the plan may fail to cure all post-petition arrearages. The Trustee cannot determine what monthly dividend is proposed to pay post-petition arrearages or if interest is proposed to the claim.

Debtor has provided for two separate claims in one box. In Class 1, Debtor provides for Statebridge Company, LLC with mortgage arrearages of \$12,000.00 and ongoing monthly installments of \$1,179.16 (beginning in December 2016). Beneath the amount of pre-petition arrearages, Debtor added a provision for post-petition arrearages of \$2,358.32 (October and November 2016 payments). The Trustee believes that the addition should be provided for as a separate claim to avoid confusion.

DISCUSSION

The Debtor may not be able to make plan payments or comply with the plan under 11 U.S.C. § 1325(a)(6). During the Plan, Debtor proposes increasing payments to \$1,950.00 per month, but under the original plan, Debtor became delinquent on plan payments of \$1,910.00. Debtor has not explained why she became delinquent and has not provided the court with any information about why she will be able to make plan payments now. Without an accurate picture of the Debtor's financial reality, the court cannot determine whether the plan is confirmable. Additionally, the court cannot determine whether the plan is confirmable because it may need to provide for more post-petition mortgage arrearages for a September 2016 payment, but the court has not been provided with any relevant information from Debtor. Therefore, the objection is sustained.

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

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

44. [16-26593-E-13](#) **JAY KLIPP** **OBJECTION TO CONFIRMATION OF**
DPC-1 **Michael Hays** **PLAN BY DAVID P. CUSICK**
11-16-16 [38]

Final Ruling: No appearance at the December 20, 2016 hearing is required.

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 of Plan was dismissed without prejudice, and the matter is removed from the calendar.**

45. [15-27295-E-13](#) **ERROL/ALITA MERCADO** **MOTION TO MODIFY PLAN**
RJ-4 **Richard Jare** **11-14-16 [72]**

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.

Correct 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 15, 2016. By the court's calculation, 35 days' notice was provided. 35 days' notice is required.

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

The Motion to Confirm the Modified Plan is denied.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on December 5, 2016. Dckt. 83. The Trustee states that Errol Mercado and Alita Mercado ("Debtor") are delinquent under the proposed plan by \$450.00. The proposed plan would have payments of \$5,850.00 coming due already, but Debtor has paid only \$5,400.00 to the Trustee so far.

DISCUSSION

The basis for the Trustee's objection is that the Debtor is \$450.00 delinquent in plan payments, which represents one month of the \$450.00 plan payment, which increases to \$675.00 per month with the July payment. The delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

The Modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 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 Modified Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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.

Correct 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 November 8, 2016. By the court’s calculation, 42 days’ notice was provided. 35 days’ notice is required.

The Motion to Confirm the 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.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

TRUSTEE’S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on December 6, 2016. Dckt. 43. The Trustee states Ned Smith and Edna Smith (“Debtor”) have proposed a monthly dividend of \$1.00 to creditor Vallejo Sanitation in 2 A. 2. The Trustee’s records indicate that \$17.48 in principal is owing still, along with interest at 4% of \$0.60.

The Trustee notes that Federal Rule of Bankruptcy Procedure 3010(b) normally limits payments to no amount less than \$15.00, unless paying the final dividend in a case, absent a specific rule or order of the court. Debtor’s proposed plan would require nineteen checks to pay the \$18.08 balance.

The Trustee does not oppose either holding payments for the creditor until \$15.00 in payments has accrued or to an increase in the monthly dividend for the creditor in the order confirming.

DEBTOR’S REPLY

Debtor filed a Reply on December 6, 2016. Dckt. 46. Debtor proposes to have the Trustee defer a portion of the attorney fee dividend sufficient to pay the creditor in full in the first month of the proposed Modified Plan, and afterward, the dividend for the attorney fees shall be increased by \$1.00 each month.

DISCUSSION

Debtor has proposed to cure creditor Vallejo Sanitation's balance of \$18.08 by using a portion of the dividend set aside for attorneys' fees in the first month of the plan, which fees will be replenished subsequently by \$1.00 per month increased payments. The Modified Plan, as amended, 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 the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtor's Modified Chapter 13 Plan—as amended to cure creditor Vallejo Sanitation's balance of \$18.08 by using a portion of the dividend set aside for attorneys' fees in the first month of the plan to pay the balance completely, which attorneys' fees dividend will be replenished subsequently by \$1.00 per month increased payments—filed on November 8, 2016, is confirmed. Counsel for the 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.

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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, involved creditors, and Office of the United States Trustee on November 29, 2016. By the court’s calculation, 21 days’ notice was provided. 21 days’ notice is required. (Fed. R. Bankr. P. 2002(a)(2), 21 day notice.)

The Motion to Sell Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the 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 Sell Property is granted.

The Bankruptcy Code permits the Chapter 13 Debtor (“Movant”) to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the real property commonly known as 3267 Palomino Circle, Fairfield, California (“Property”).

The proposed purchaser of the Property is Mihaela Robb and the terms of the sale are:

- A. Purchase price of \$385,000.00.
- B. Movant will not receive any proceeds from the sale.
- C. Escrow shall close thirty days after the proposed sale is accepted.
- D. Seller shall pay:
 - 1. For smoke alarm and carbon monoxide device installation and water heater brace, if required;

2. Country transfer tax or fee; and
 3. City transfer tax or fee.
- E. Buyer shall pay:
1. Escrow fee;
 2. Owner's title insurance policy; and
 3. \$350.00 for a one-year home warranty plan.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on December 6, 2016. Dckt. 25. The Trustee states that he has no objection to the Motion.

The Trustee also points out that Debtor quitclaimed title to his ex-wife (Adrienne Vera) in 2012, and she has completed her own Chapter 13 case (No. 11-39392-C-13C). Debtor's plan was confirmed on November 9, 2015, and the Property was listed as surrendered.

The Trustee notes that Debtor has not filed a change of address. Additionally, Debtor lists a rental expense of \$1,600.00 on Schedule J. It is unclear whether Debtor has been using the \$1,600.00 improperly.

DEBTOR'S REPLY

Debtor filed a Reply on December 12, 2016. Dckt. 28. Debtor states that a change of address was filed on December 8, 2016. *See* Dckt. 27. Debtor asserts that he began making repairs to the Property in January 2016, totaling \$4,000.00. Additionally, Debtor assisted his fiancé (now his wife) with school expenses of more than \$2,000.00 in the past year, as well as her increased transportation expenses of \$300.00 per month to commute for school. Debtor's rent has been \$1,550.00 per month since June when he incurred moving expenses.

DISCUSSION

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

Based on the evidence before the court, the court determines that the proposed short sale nature of the Property is in the best interest of the Estate, Movant, and creditors.

Furthermore, Movant requests that the fourteen-day stay period pursuant to Federal Rule of Bankruptcy Procedure 6004(g) be waived due to Movant's ex-wife having already obtained court approval

to sell. The court finds that, in light of the short sale nature of the sale and for cause, the fourteen-day stay period is waived.

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 Sell Property filed by Willis Mahaffey, the Chapter 13 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 Willis Mahaffey, the Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Mihaela Robb or nominee (“Buyer”), the Property commonly known as 3267 Palomino Circle, Fairfield, California (“Property”), on the following terms:

1. The Property shall be sold to Buyer for \$385,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 23, and as further provided in this Order.
2. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.
3. The Chapter 13 Debtor be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.
4. The fourteen-day stay period pursuant to Federal Rule of Bankruptcy Procedure 6004(g) is waived for cause.
5. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtor. Within fourteen days of the close of escrow the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.

48. [16-21099-E-13](#) **KWAJHALIEN DORN-DAVIS**
MAC-4 **Marc Carpenter**

**MOTION TO APPROVE LOAN
MODIFICATION O.S.T.**
12-8-16 [73]

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)(3) Motion—Hearing Required.

Correct 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 December 8, 2016. By the court’s calculation, 12 days’ notice was provided.

The Motion to Approve Loan Modification was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). The Debtor, Creditors, the 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 Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by Kwajhalien Dorn-Davis (“Debtor”) seeks court approval for Debtor to incur post-petition credit. Nationstar Mortgage LLC (“Creditor”), whose claim Debtor has proposed to place in Class 4, has agreed to a loan modification that will increase Debtor’s mortgage payment from the current \$1,488.87 per month to \$1,552.64 per month. The modification will capitalize the pre-petition arrears and provide for stepped increases in the interest rate from 3.125% in years 1–5 to 3.500% in years 6–28.

The Motion is supported by the Declaration of Kwajhalien Dorn-Davis. Dckt. 75. The Declaration affirms Debtor’s desire to obtain the post-petition financing and provides evidence of Debtor’s ability to pay this claim on the modified terms.

This post-petition financing is consistent with the Chapter 13 Plan in this case and with Debtor’s ability to fund that Plan. There being no objection from the Trustee or other parties in interest, and the Motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification 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 Approve Loan Modification filed by Kwajhalien Dorn-Davis 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 court authorizes Kwajhalien Dorn-Davis (“Debtor”) to amend the terms of the loan with Nationstar Mortgage LLC (“Creditor”), which is secured by the real property commonly known as 5021 Sky Parkway, Sacramento, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion (Dckt. 76).