

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

March 9, 2021 at 2:00 p.m.

1.	<u>17-28000-E-13</u> <u>MC-1</u>	GEORGE BELTRAN AND CLAUDIA CHAVEZ Muoi Chea	MOTION TO MODIFY PLAN 1-28-21 <u>[39]</u>
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 28, 2021. By the court's calculation, 40 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.
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The debtor, George Beltran and Claudia Chavez ("Debtor") seeks confirmation of the Modified Plan because Debtor can no longer afford the current Plan payment due to COVID-19 related employment issues and a series of unexpected expenses. Declaration, Dckt. 41. The Modified Plan provides \$800.00 to be paid through the end of the plan, and a 67% percent dividend to unsecured

claims totaling \$55,000.00. Modified Plan, Dckt. 43. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on February 19, 2021. Dckt. 50. Trustee opposes confirmation of the Plan on the basis that the proposed plan does not authorize the 1.7% interest payment to unsecured creditors that was authorized by Debtor's confirmed plan. Trustee has disbursed \$1,564.63 in interest to general unsecured creditors through January, 2021.

DISCUSSION

Debtor filed a Response on February 24, 2021. Dckt. 53. Debtor proposes to resolve Trustee's objection by adding the following language to the Order:

All Payments Trustee made to general unsecured creditors through January 2021 [are] authorized.

The prior confirmed Plan (Dckt. 13, Additional Provisions, p. 7) provided for a 100% dividend for general unsecured claims, plus "the federal judgment rate which is 1.70% of their claim." Though not quiet clear, with the reference being made to the "federal judgment rate," this is interpreted to be interest computed at rate of 1.70% per annum. It is not clear whether the Plan provides for amortizing the 1.70% interest over the life of the plan (similar to a mortgage), the interest is paid in full each month, or the interest accrues until the principal amount is paid in full, and then the accrued interest paid in the final months of the Plan.

Due to the unfortunate turn of financial events, the Modified Plan provides for not less than a 67% dividend to creditors with unsecured claims. It is not clear if this is intended to state that:

- A. it is at least 67% of the general unsecured claim, plus interest computed at 1.70% that was disbursed by the Trustee prior to confirmation of the Modified Plan, or
- B. The total of all disbursements by the Trustee through the plan, however originally categorized by the Trustee and Debtor prior to confirmation of the Modified Plan, shall total no less than 67% of the general unsecured claims.

At the hearing, **XXXXXXX**

~~The Modified Plan, as amended, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.~~

~~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 to Confirm the Modified Chapter 13 Plan filed by the~~

debtor, George Beltran and Claudia Chavez ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

~~IT IS ORDERED~~ that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on January 28, 2021, as amended,

~~All payments Trustee made to general unsecured creditors through January 2021 are authorized.~~

~~is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney on February 17, 2021. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

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

- A. Debtor has not filed all required tax returns.
- B. The Debtor's Plan fails Chapter 7 Liquidation Analysis.
- C. The Plan may unfairly discriminate as to general unsecured creditors.
- D. Debtor's first Plan payment of \$2,400.00 will be due on February 25, 2021, which is before the hearing on this objection.

DISCUSSION

Trustee's objections are well-taken.

Failure to File Tax Returns

Debtor admitted at the Meeting of Creditors that the federal income tax return for the 2018 and 2019 tax years have not been filed still. The meeting has been continued to April 22, 2021 at 1:00 p.m., in order to give Debtor sufficient time to file the required returns. Dckt. 22 at 1:28. Filing of the return is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Debtor Fails Liquidation Analysis

Debtor's plan fails the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Trustee states that Debtor's non-exempt equity totals \$183,228.00 and Debtor is proposing a 0% dividend to unsecured creditors. Dckt. 2 at p. 5 § 3.147. According to Trustee, non-exempt assets listed in the Schedules include:

- ◆ Debtor's residence, \$76,528; property in Napa, California valued at \$100,000;
- ◆ A 2000 Chevrolet valued at \$450 (Schedule A/B schedules it at \$1,000);
- ◆ A 2004 Honda valued at \$1,000;
- ◆ A 1994 Toyota valued at \$250; trailers valued at \$1,000;
- ◆ US Savings Bond valued at \$2,500; and
- ◆ 2019/2020 tax refunds in the amount of \$1,500.

Dckt. 1, at 11-16.

Unfair Discrimination Against Unsecured Claims

Trustee also opposes confirmation due to possible unfair discrimination to unsecured claims under 11 U.S.C. § 1322(b)(3). Debtor proposes to pay 0.00% to unsecured claims; however, Debtor proposes to pay the unsecured claim of Frank Accettola outside the Plan. Trustee asserts that Debtor admitted at the First Meeting of Creditors this creditor is his uncle, and the debt is a family loan. Cusick Declaration, Dckt. 24, ¶ 9.

Plan Payment Due Before Hearing on Motion to Confirm Plan

Debtor's first Plan payment of \$2,400.00 will be due on February 25, 2021, which is before the hearing on this 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 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 Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 4, 2021. By the court's calculation, 33 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 Incur Debt is XXXXX.

The Motion to Approve Loan Modification filed by Randle Wayne Hodge ("Debtor") seeks court approval for Debtor's fiancée to incur post-petition credit. Caliber Home Loans, Inc. ("Creditor"), has approved Debtor's application for a refinance of Debtor's mortgage that will reduce Debtor's mortgage payment from the current \$1,586.66 per month to \$1,106.55 per month. The refinance will provide for a loan in the amount of \$275,500 with a 2.625% interest rate.

The Motion is supported by the Declaration of Randle Wayne Hodge and Declaration of Belen Olivera. Dckts. 59, 60. The Declaration affirms Debtor's desire to obtain the post-petition refinancing and provides evidence of Debtor's ability to pay this claim on the modified terms.

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).

Here, the court is presented with a loan refinance where the Debtor will not be taking up the loan but his fiancée. Both Debtor and the fiancée will be on the deed. There is no explanation as to why it is the fiancée and not Debtor who is seeking the refinance in his own name.

In her Declaration, Debtor's fiancée, who is acting as the borrower, makes the following statements:

1. "I am the Debtor's, Randall Hodge, fiancée and we live together[.]"
2. "I will be the sole person on the refinance loan but both Randall and I will be on the deed."

Declaration, Dckt. 60. That is the entirety of the declaration.

Debtor's Declaration is not much helpful either. The Declaration seems to be a copy/paste of the motion, stating that he is seeking approval of the refinance, that his fiancée will be the one on the loan, and the terms of the said loan.

Decision

Debtor has come to the court to refinance his property, decrease the interest rate, and substantially decrease the monthly payment. To obtain this loan, it is necessary for his fiancée to be the borrower, and to be put on title as part of the loan process (the court infers this from common knowledge of residential financing).

No unsecured claims have been filed in this case.

On Schedule A/B Debtor values the Property that is to secure the new loan to have a value of \$470,000. Dckt. 17 at 3. The secured claim of HSBC Bank, USA, N.A., as Trustee, for which the Property is the collateral has been filed in the amount of (\$195,941.78). Proof of Claim 1-1. The only other claim filed is the unsecured claim of Portfolio Recovery Associates, LLC, in the amount of (\$3,620.94). Proof of Claim 2-1.

The Chapter 13 Plan requires that the unsecured claim be paid in full. Modified Plan, ¶ 3.14; Dckt. 46. It appears that the reason for the filing of this case was to address the (\$38,000) arrearage on the HSBC Bank, USA, Trustee, claim.

The Motion states that Debtor's fiancée is to hold title with Debtor as Tenant's in Common with Right of Survivorship. Motion, p. 2:3-7; Dckt. 57.

No provision is made in the Motion for the payment of the unpaid unsecured claim in this case. Given that it appears that substantial non-exempt equity would be given to the fiancée, payment of this small general unsecured claim as part of the refinance authorization appears to be appropriate.

At the hearing, **XXXXXXX**

~~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 Chapter 13 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 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 to Incur Debt filed by Randle Wayne Hodge ("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 Randle Wayne Hodge is authorized to incur debt pursuant to the terms of the agreement, Exhibit C, Dckt. 61, and for the granting of the lien to secure the new debt.~~

~~**IT IS FURTHER ORDERED** that Debtor is authorized to transfer title in the Property commonly known as 4776 Brookside Circle, Fairfield, California as part of the Loan to refinance said property to: Randle Wayne Hodge, Jr. and Belen Olivera As Joint Tenants With Right Of Survivorship. Except for the loan and security interest granted pursuant to this Order, the authorizing this transfer shall not be deemed to authorize a transfer that would be avoidable under applicable federal or state law, such as a fraudulent conveyance, and insulate such transfer from challenge by a bankruptcy trustee or creditor(s).~~

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on February 5, 2021. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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

The Objection to Claimed Exemptions is XXXXX.

The Chapter 13 Trustee, Davis P. Cusick ("Trustee") objects to Curtis Terence Burks and Carmen Vernita Burks' ("Debtor") claimed exemptions under California law because Debtor has overused the exemptions they may be entitled to under C.C.P. § 704.070. Dckt. 31. Debtor has claimed the full amounts of their JP Chase Bank Checking and Savings accounts as exempt.

C.C.P. 704.070(b)(2) limits Debtor's exemption through C.C.P. 706.050(a)(1), which allows for levy of 25% of judgement debtor's disposable earnings. Thus, Debtors may not claim the entire asset value as exempt as only 75% of the paid earning, which can be traced into deposits accounts, are exempt. The Chapter 13 Trustee's Objection is sustained, and the claimed exemptions are disallowed.

DISCUSSION

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

DEBTOR'S RESPONSE

Debtor filed a Response on February 19, 2021. Dckt. 40. Debtor agrees with Trustee in that the exemption allows to protect 75% of the Debtor's paid earnings. *Id.* at ¶ 2. Debtor has amended Schedules B and C to provide for exempting 75% through C.C.P. § 704.070, and exempting the remaining 25% under C.C.P. § 704.225. *Id.* at ¶ 3.

In response to Debtor's filing of amended Schedules A/B and C, Trustee filed a Notice of Withdrawal requesting the court dismiss the instant motion pursuant to FRCP 41(a)(2), and FRBP 9014 and 7041. Dckt. 45.

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

IT IS ORDERED that Objection is **xxxxxx**.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on January 28, 2021. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is XXXXX.

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

- A. Debtor cannot afford to make the payments or comply with the plan.
- B. Debtor improperly uses an exemption pursuant to C.C.P. § 704.70.

DISCUSSION

Trustee's objections are well-taken.

Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). According to Trustee, Debtor's Plan relies on a forbearance agreement with the creditor

holding the first deed of trust over their primary residence. Debtor lists Creditor Dovenmuehle as a Class 4 claim; yet, the Non-Standard Provisions indicate that Debtor is currently in forbearance due to COVID-19 emergency relief and intends to either modify their loan or commence ongoing payments, directly to Creditor in the amount of \$2,734.44 beginning July 2021. Thus, the Plan cannot be confirmed unless Creditor agrees to this treatment.

Additionally, Trustee argues that Debtor may have improperly classified Creditor Village Capital & Investments, LLC, as a Class 4 claim, where Creditor Village has filed a proof of claim identifying ongoing payments of \$2,813.19 and arrears of \$29,454.08. Proof of claim, 7-1. Moreover, Trustee points to Creditor Village's Objection to the plan stating Debtor's forbearance ended October 31, 2020 and no further forbearance has been extended. Dckt. 19, 2:7. Trustee is unclear if this claim is misclassified as Class 4, with nonstandard provisions, or if Creditor should be listed as Class 1 in the Plan.

Trustee also argues that Debtor's budget is insufficient to pay mortgage. Schedule I indicates Debtor's net monthly income is \$4,948.34, and Schedule J shows Debtor's net monthly income after expenses is \$908.00. Dckt. 1. Debtor's Schedule J is silent on Debtor's making any monthly mortgage payment. Debtor's income is insufficient to fund the plan and pay Village Capital & Investments, LLC the ongoing mortgage payment and the arrears identified in their proof of claim.

Exemption

Lastly, Trustee states that Debtor has overused the exemptions they may be entitled to under C.C.P. § 704.070. Debtor has claimed the full amounts of their JP Chase Bank checking and savings accounts as exempt. Pursuant to C.C.P. § 704.070, Debtor may claim only 75% of the paid earnings that can be traced to deposit accounts as exempt.

The hearing is continued to allow Debtor's Counsel and Counsel for Village Capital & Investment, LLC to determine who is not processing the Debtor's COVID forbearance request.

March 9, 2021 Hearing

On March 5, 2021, Debtor filed a Supplemental Response to the Village Capital & Investments, LLC Opposition. Dckt. 47. It is reported that Debtor will have to seek a further forbearance in April 2021, and that such forbearance will be through July 2021.

At the hearing **XXXXXXXXXX**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on January 13, 2021. By the court's calculation, 41 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is XXXXX.

Village Capital & Investment, LLC ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that the Plan is not feasible because the plan fails to require the maintenance of the correct ongoing post-petition monthly payment as required by 11 U.S.C. §1322(b)(5).

DISCUSSION

Infeasible Plan

Creditor alleges that the Plan is not feasible. 11 U.S.C. § 1325(a)(6). Debtor sought and received forbearance, due to Covid-19, from Creditor for the dates August 2, 2020, through October 31, 2020. That period has expired and no further forbearance has been offered to Debtor.

However, under the Non-Standard Provisions of the Plan, Debtor's plan proposes forbearance to continue until July, 2021 and does not provide for payments through that date. Thus, according to Creditor, Debtor's plan does not provide for adequate protection of Creditor's interest.

Creditor further claims that a Proof of Claim, to be timely filed, will show arrearage of approximately \$70,000. A review of Debtor's disposable income shows Debtor has insufficient income to make the correct post-petition monthly payment to Creditor. As such, the Plan may not be confirmed.

DEBTOR'S RESPONSE

Debtor disputes the date upon which monthly mortgage payment are to resume and asserts a right to forbearance pursuant to the CARES Act. Debtor points the court to Section 4022(b) ("CARES Act") which states:

(b) FORBEARANCE.—

(1) IN GENERAL.—During the covered period, a borrower with a Federally backed mortgage loan experiencing a financial hardship due, directly or indirectly, to the COVID–19 emergency may request forbearance on the Federally backed mortgage loan, regardless of delinquency status, by—

(A) submitting a request to the borrower's servicer; and

(B) affirming that the borrower is experiencing a financial hardship during the COVID–19 emergency.

(2) DURATION OF FORBEARANCE.—Upon a request by a borrower for forbearance under paragraph (1), such forbearance shall be granted for up to 180 days, and shall be extended for an additional period of up to 180 days at the request of the borrower, provided that, at the borrower's request, either the initial or extended period of forbearance may be shortened.

(3) ...

(c) REQUIREMENTS FOR SERVICERS.—

(1) IN GENERAL.—Upon receiving a request for forbearance from a borrower under subsection (b), the servicer shall with no additional documentation required other than the borrower's attestation to a financial hardship caused by the COVID–19 emergency and with no fees, penalties, or interest (beyond the amounts scheduled or calculated as if the borrower made all contractual payments on time and in full under the terms of the mortgage contract) charged to the borrower in connection with the forbearance, provide the forbearance for up to 180 days, which may be extended for an additional period of up to 180 days at the request of the borrower, provided that, the borrower's request for an extension is made during the covered period, and, at the borrower's request, either the initial or extended period of forbearance may be shortened.

Section 4022(b) of the CARES Act.

Debtor contends that the loan in question is a federally backed Veterans Administration loan, and thus qualifies for forbearance under the CARES Act. Declaration, Dckt. 36, ¶ 15. Debtor's declaration states Debtor's employment has been affected by COVID-19. *Id.* at ¶¶ 4-9, 15. Debtor requested and was granted initial forbearance from August 1, 2020, through October 31, 2020. *Id.* at ¶ 10. Both Creditor and Debtor agree as to this specific period of forbearance.

Debtor testifies, under penalty of perjury, that on October 23, 2020 Creditor was contacted, through the mortgage servicer (Dovenmuehle), to request further forbearance entitled under the CARES Act. *Id.* at ¶ 11. Debtor further testifies they were advised by the representative that the forbearance would be extended for an additional three months, until January 31, 2021. *Id.* at ¶ 11.

Debtor adds that the mortgage servicer verbally confirmed such extension through January 31, 2021 when they received a call on December 3, 2020 from a representative informing them that their account had been updated and accurately reflected the extension to January 31, 2021. *Id.* at ¶ 13.

Debtor also testifies that on January 19, 2021 they requested in writing, and were granted, further extension through May 31, 2021. *Id.* at ¶ 14. Creditor states that no further forbearance has been offered to Debtor after the period which expired on October 31, 2020. Lopez Declaration, Dckt. 21.

Debtor provides a copy of the forbearance granted to them by Creditor for the period of March 1, 2020 through August 1, 2020. Exhibit A, Dckt. 37.

While it seems that Debtor may be entitled to the protection of Section 4022(b) of the CARES Act, Debtor does not provide the court with such request for an extension. Debtor testifies that they requested an extension in writing on January 19, 2021 and that it has already been approved. Yet no evidence has been presented showing that Creditor or the mortgage servicer has in fact received the application or that they have approved or denied such an extension.

With respect to this Creditor, if Debtor has requested and is entitled to further forbearance, but is improperly being denied such by Creditor, then such may have to be addressed through adversary proceeding litigation, with can be made part of a Chapter 13 plan.

The hearing is continued to allow Debtor's Counsel and Counsel for Village Capital & Investment, LLC to determine who is not processing the Debtor's COVID forbearance request.

March 9, 2021 Hearing

On March 5, 2021, Debtor filed a Supplemental Response to the Village Capital & Investments, LLC Opposition. Dckt. 47. It is reported that Debtor will have to seek a further forbearance in April 2021, and that such forbearance will be through July 2021.

At the hearing **xxxxxxxxxx**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 11, 2020. By the court's calculation, 62 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

<p>The Motion to Confirm the Modified Plan is denied without prejudice.</p>
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The debtor, Bethany Elaine Sanders-Johnson ("Debtor") seeks confirmation of the Modified Plan to begin remitting payments now that she has obtained full time employment as a COVID nurse for Nightingales list. Declaration, Dckt. 89. The Modified Plan provides for plan payments of \$3,150.00 per month commencing November 25, 2020 for 70 months, and a 100 percent dividend to unsecured claims totaling \$39,665.22. Modified Plan, Dckt. 90. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on December 9, 2020. Dckt. 94. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor is delinquent in plan payments.
- B. Debtor states an incorrect amount in post-petition arrears.

C. Debtor may not have the ability to make plan payments.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is \$3,150.00 delinquent in plan payments, which represents one month of the \$3,150.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Post-Petition Arrearage

Trustee asserts that due to Debtor's failure to make plan payments, Trustee had been unable to make class 1 creditor Freedom Mortgage Corporation installment payments for the months of June, July, August, September and October of 2020 for the first deed. Trustee's accounting shows that the amount due for the unpaid installments is \$6,278.65.

Trustee argues that while the modified plan attempts to specify a cure of the post-petition arrearage for the first deed, the Debtor appears to have combined the first arrears amount of \$4,522.18 and the second arrears amount of \$6,278.65 into one proposed claim and has not specified the months in arrears. According to Trustee, the Debtor has increased the second deed claim to \$405.00, which is incorrect because there has not been any delinquency on the second deed since confirmation. Thus, the amount should remain at \$324.00.

Ability to Pay and Good Faith

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Trustee asserts that Debtor has failed to file Supplemental Schedules I and J to account for her new employment as a nurse, where the original schedules were last filed in August 2019. Trustee further argues that Debtor has not complied with the order confirming to notify the Trustee in writing of any termination, reduction of, or other change in employment. The Debtor has also failed to provide current pay advices.

Moreover, Debtor has failed to make the November 2020 payment and has a history in the case which shows that Debtor is not likely to pay the plan.

Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Debtor filed a Reply requesting the court continue the hearing on this motion so that Debtor and counsel may meet to discuss Trustee's Opposition. Dckt. 97. Debtor explains that as a frontline healthcare employee working with COVID-19 patients and due to the recent holidays, she has been unable to meet with her counsel. *Id.*

At the hearing, Debtor's counsel reported that a little more time is needed for the Trustee to review the new information. The Trustee concurred in the request for a continuance.

January 26, 2020 Hearing

Debtor filed “Janus-faced”^{FN.1} Amended/Supplemental Schedules I and J and the Declaration of Bethany Sanders-Johnson in support of the Amended Schedules on January 20, 2020. Dckts. 101, 102. The court says “Janus-faced” because Debtor states under penalty of perjury that the Schedules are both amended, with the changes backward looking, dating back to the filing of this case, and supplemental, with the same changes being forward looking, effective only from a post-petition date.

FN. 1.

Janus-faced
Definition of Janus-faced
: having two contrasting aspects
especially : DUPLICITOUS, TWO-FACED

Synonyms

artificial, backhanded, counterfeit, double, double-dealing, double-faced, fake, feigned, hypocritical, insincere, jive [slang], left-handed, lip, mealy, mealymouthed, Pecksniffian, phony (also phoney), phony-baloney (or phoney-baloney), pretended, two-faced, unctuous

Antonyms

artless, candid, genuine, heartfelt, honest, sincere, undesigning, unfeigned

<https://www.merriam-webster.com/dictionary/Janus-faced>

The court has repeatedly addressed with counsel, his other clients, and, through counsel, his office staff that embrace a “check every box possible and let the judge figure it out” strategy. Though repeatedly addressed, the present Amended/Supplemental Schedules I and J demonstrate that counsel’s client, counsel, and his staff intentionally chose not to comply with the law and continue to file Janus-faced, “*whatever*,” pleadings.

Debtor stating under penalty of perjury that the changes relate all the way back to the filing of this case, and also are effective at a post-petition date in 2021 demonstrates either an intentional false statements under penalty of perjury or an incompetence to provide testimony under penalty of perjury.

Debtor also provides her Declaration (Dckt. 102) in support of the present Motion. Debtor testifies under penalty of perjury that during the COVID lockdown her job as a dental assistant was terminated as non-essential, she completed her education, and she found employment as a nurse at Nightgale’s List, which is a contract agency for traveling nurses. Declaration, ¶¶ 2,3; Dckt. 102. She works six days a week with COVID-19 patients. *Id.*, ¶ 3. Debtor also explains that due to this job her expenses have increased as she is required to travel long distances and stay overnight; she is also not provided with meals and sometimes she has to pay for those. *Id.*

Debtor then goes to explain the changes in her expenses, specifically the increases in home

maintenance, utilities (electricity and internet), food, education, personal care, gas, entertainment and vehicle costs. *Id.*, ¶ 3.

A review of Debtor's Amended Schedule I now accounts for Debtor's new income as a nurse, with a gross monthly income in the amount of \$9,533.33, with a total monthly take home pay of \$8,229.39 after accounting for payroll deductions. Dckt. 101, Schedule I, at p. 5. Debtor's Amended Schedule J reflects increases for home maintenance, utilities, food and housekeeping supplies, childcare and children's education costs, clothing, personal care products, transportation, entertainment, vehicle insurance, and other (travel costs in support of COVID-19 overtime). *Id.*, Schedule J, at p. 7. The Amended/Supplemental states a total of monthly expenses in the amount of \$5,078.95, where the original Schedule J filed in August of 2019 stated a total in monthly expenses of \$1,459.81. *Id.*; *see also* Dckt. 1.

Beginning with Amended/Supplemental Schedule I, Debtor shows that her dedication and hard work have paid off, and she is now employed by Nightingale's List, with monthly wages or salary of \$9,533.33 a month - which is \$114,399.96 a year. Well in excess of her income, which included family support and Lyft driving. ^{FN.2.}

FN. 2. It is not clear whether Nightingale's List is an employer or a job placement service, temporary staffing agency, or both.

From the \$114,399.96 annual income, Debtor has a monthly withholding of \$1,303.94 for her federal and state income taxes and Social Security taxes. That leaves \$8,229.39 in take home income. Dckt. 101. Amended/Supplemental Schedule I does not include the \$1,929.42 listed on the original Schedule I for alimony, spousal support, maintenance received (family and friends support being listed on line 8h). Dckt. 1 at 33. On Amended/Supplemental Schedule J Debtor lists having five minor children dependents (one having turned 18 during this case, with the youngest two now 3 years old). Even with her new income, it would be surprising that the children's father(s) would automatically have his/their support obligations terminated.

Debtor does show on Amended/Supplemental Schedule J the increases in non-mortgage, property taxes, property insurance (which are provided for in the Plan) expenses. Dckt. 101 at 6-7. With respect to some of the substantial increases, Debtor's conclusion that "this is what they are" or her explanation that they are immediately obviously "reasonable."

Debtor states that she has increased her phone/internet from (\$100) a month to (\$450) due to "upgrading" her internet that costs an additional (\$350) a month. This increase is stated to be due to "home schooling." A (\$350) a month increase for an upgrade to an existing service seems high.

Debtor states that her monthly food billing has increased from (\$500) a month to (\$1,700) a month due to home schooling and Debtor having to travel for job and having to pay for her own food while traveling. Looking at the original Schedule J, it does not appear reasonable that Debtor and her five dependants had a monthly food and housekeeping supplies expense of only (\$500) a month. Deducting (\$100) a month for housekeeping supplies for six persons, a (\$400) food budget would have been only (\$0.74) per person per meal in a thirty-day month. Such does not appear credible, and such

“expense” was either a “creative” number to make the plan “work,” or Debtor had additional income for that expense.

The expense now jumps to \$1,700 a month, a 240% increase. While stating that she has to pay for her meals while traveling, Debtor had to pay for her meals while being at home. There may be an increase due to having some meals at restaurants, it is not clear that Debtor is not being reimbursed for meals or Debtor is incurring reasonable “dining out” expense. If the (\$500) food and household supplies expense was real, then it is not clear that a 240% increase is real.

Debtor doubles the “personal care” expense from (\$150) a month to (\$500) a month. Her explanation is that this is due to COVID-19 orders requiring her and her family to stay at home. It is unclear how staying at home causes a 100% increase in personal care expenses. The news reports have repeatedly reported how many personal care providers (such as hair, manicuring, and the like) have been shut down or out of business, and people have not been using such services.

At the hearing, Debtor’s counsel requested a continuance to allow the Debtor to file Supplemental Schedules and a new plan. The Trustee did not oppose the continuance.

March 9, 2021 Hearing

As of the court’s March 4, 2020 preparation of this pre-hearing disposition, no further pleadings or documents have been filed for this matter.

Debtor not having been able to address filling Supplemental Schedules, the serious issues raised by the prior Janus-Schedules, and it appearing that Debtor needs a “fresh start” in advancing a plan, the Motion is denied without prejudice.

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 to Confirm Modified Plan filed by Bethany Elaine Sanders-Johnson, 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 without prejudice.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 23, 2021. 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). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----

The Motion to Incur Debt is granted.

James David Hill and Anne Michele Hill ("Debtor") seeks permission to purchase real property commonly known as 1172 Willow Creek Drive, Yuba City, California, with a total purchase price of \$380,000.00 and monthly payments of \$1,523.22 to Freedom Mortgage Corporation over 30 years with a 2.75% fixed interest rate.

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).

On March 1, 2021, David P. Cusick, (“Trustee”) filed a Response noting that although not opposing the terms of the loan, no Supplemental Schedules had been filed. Dckt. 35.

On March 3, 2021, Debtor filed a Response and presenting as Exhibit B, Supplemental Schedules I and J. Dckt. 37. On March 4, 2021, Debtor filed Supplemental Schedules I and J with the court. Dckt. 42.

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 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 to Incur Debt filed by James David Hill and Anne Michele Hill (“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 James David Hill and Anne Michele Hill is authorized to incur debt pursuant to the terms of the agreement, Exhibit A, Dckt. 33.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 4, 2021. By the court's calculation, 64 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the 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).

<p>The Motion to Confirm the Plan is denied.</p>

The debtors, Marlon San Antonio Valenzuela and Michelle ("Debtor") seek confirmation of the Chapter 13 Plan. The Plan provides for \$3,300.00 payments for sixty months, and a zero (0) dividend to unsecured claims totaling \$3,319.00. Plan, Dckt. 24. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on February 17, 2021. Dckt. 29. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor has failed to provide pay advices.
- B. Debtor has failed to provide tax transcripts.
- C. The proposed Plan states that Debtor's attorney will comply with Local Bankruptcy Rule 2016-1(c), but the section for "Administrative expenses" specifies that their attorney will receive \$0.00.

DISCUSSION

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

Trustee asserts that the proposed Plan does not provide for Debtor's attorney fees, and is uncertain what the attorney is to be paid per month where approximately \$180.00 per month is available. The Debtor's proposed Plan, specifically § 3.05, states that Debtor's attorney chose to comply with Local Bankruptcy Rule 2016-1(c). The Plan also states that attorney received \$0.00 prior to filing this case and \$4,000 will be paid through the Plan. Section 3.06 of the Plan under "Administrative expenses," specifies that their attorney will receive \$0.00, which will result in no specific monthly payments of the \$4,000.00 of attorney fees. Dckt. 24.

At the hearing **xxxxxxx**

The Plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

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 to Confirm the Chapter 13 Plan filed by the debtor, Marlon San Antonio Valenzuela and Michelle ("Debtor"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Confirm the 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.

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (*pro se*) on February 18, 2021. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.
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The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that:

- A. Debtor used the wrong plan form.
- B. Debtor failed to appear to the Meeting of Creditors.
- C. Debtor may be over the debt limit under Chapter 13.
- D. Debtor has filled out several petition related documents wrong.
- E. Debtor has not made Plan payments and is delinquent.
- F. Debtor does not provide for Trustee fees.

- G. Debtor has not filed tax returns, six months of profit or loss statements, six months of bank statements, proof of license and insurance or written statements that no such documentation exists.
- H. Debtor lists herself as self employed and a business questionnaire and request for documents was mailed to Debtor on January 26, 2021 with no response.

DISCUSSION

Trustee's objections are well-taken.

Wrong Plan Form

Trustee argues that the Plan is based upon a plan form that is not approved by the United States Bankruptcy Court for the Eastern District of California. The Plan is based on a plan form approved by the United States Bankruptcy Court for the Central District of California, which is not used in the Eastern District of California. Local Rule 3015-1(a) states that the mandatory form Plan EDC 003-080 shall be utilized as the standard form.

Failure to Appear at 341 Meeting

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

Section for 109 Amount of Debt Compliance

Debtor does not qualify for Chapter 13 treatment because the secured debt limit in 11 U.S.C. § 109(e) has been exceeded. That section limits Chapter 13 eligibility to individuals with regular income who owe "on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than \$419,275.00 and noncontingent, liquidated, secured debts of less than \$1,257,850.00." Debtor's Summary of Schedules indicates that Debtor was well above the limits of § 109(e) as of the petition date, and so, the court will deny plan confirmation on this basis.

Documents Filled Out Wrong

Trustee notes that Debtor has filled out various documents wrong. The petition does not list a business name while Schedule I does. Schedule A/B does not answer if Debtor owns certain property, such as cash or bank accounts, Schedule D does not answer if debtor has any secured debt, where secured claims have been filed. Debtor schedules no unsecured claims on Schedule E/F except for the IRS but then does not provide that any unsecured debt exists in the plan. Debtor's expenses on Schedule J exceed their income on Schedule I. Schedule J shows no dependants while Form 122C-1 indicates Debtor had household of four (4) in the months before filing.

Pay Stubs & Tax Returns

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

Delinquency

Debtor is \$2,602.00 delinquent in plan payments, which represents one month of the \$2,602.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Failure to File Documents Related to Business

Debtor has failed to timely provide the Chapter 13 Trustee with business documents including:

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

11 U.S.C. §§ 521(e)(2)(A)(i), 704(a)(3), 1106(a)(3), 1302(b)(1), 1302(c); FED. R. BANKR. P. 4002(b)(2) & (3). Debtor is required to submit those documents and cooperate with the Chapter 13 Trustee. 11 U.S.C. § 521(a)(3). Without Debtor submitting all required documents, the court and the Chapter 13 Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained, and the Plan is not confirmed. ^{FN.1.}

FN. 1. The court notes that this is Debtor's second bankruptcy case that has been pending within the past 12 months. Debtor's prior case, 20-25199 was dismissed on December 1, 2020. Debtor attempted to prosecute that one in *pro se*, as attempting 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 Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

11. [21-20042-E-13](#) [RDW-2](#) **LUCIA SOLORIO** **OBJECTION TO CONFIRMATION OF**
Pro Se **PLAN BY VIRINDER GREWEL**
2-18-21 [39]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on February 18, 2021. By the court’s calculation, 19 days’ notice was provided. 14 days’ notice is required.

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

The Objection to Confirmation of Plan is sustained.

Virinder Grewel, as to an undivided 20% interest and Scott R. Williams and Anastasie C. Martin Trustees of the Williams Trust Dated August 19, 2014 as to an undivided 19.20% interest and PENSICO Trust Company LLC Custodian FBO James B. Martin IRA as to an undivided 12.667% interest and PENSICO Trust Company LLC Custodian FBO Claire M. Martin IRA as to an undivided 8.667% interest and PENSICO Trust Company LLC Custodian FBO ANASTASIE MARTIN IRA as to an undivided 8.533% interest and Gurdev S. Grewal as to an undivided 7.333% interest and Michael J.

Maderos and Catherine Maderos, Trustees of The Maderos Family Trust Dated 7/29/1999 as to an undivided 7% interest and Brian J. Tillinghast as to an undivided 7% interest and Equity Trust Company Custodian FBO Balwant K Grewal IRA as to an undivided 6% interest and PENSCO Trust Company LLC Custodian FBO SCOTT R. WILLIAMS IRA, as to an undivided 3.60% interest (“Creditor”) holding a secured claim opposes confirmation of the Plan on the basis that:

- A. The case and the Plan were not filed in good faith.
- B. The Plan is not feasible.

DISCUSSION

Creditor’s objections are well-taken.

Feasibility

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Creditor asserts that the Plan is not feasible because Creditor’s claim must be paid through the plan where Creditor’s loan matures on March 1, 2021 and Debtor objects to any plan that extends the maturity on its loan pursuant to 11 U.S.C. § 1322(b)(2).

Creditor argues that even if Debtor was allowed to provide for Creditor’s entire claim, Debtor lacks the income to fund the increased payments that would be due under the Plan which would include a market rate of interest on Creditor’s claim.

Without an accurate picture of Debtor’s financial reality, the court cannot determine whether the Plan is confirmable.

Good-Faith Filing

Creditor alleges that the bankruptcy case and the Plan were not filed in good faith. *See* 11 U.S.C. § 1325(a)(3). Good faith depends on the totality of the circumstances. *In re Warren*, 89 B.R. 87 (9th Cir. BAP 1988). Thus, the Plan may not be confirmed. Factors to be considered in determining good faith include, but are not limited to:

- 1) The amount of the proposed payments and the amounts of the debtor's surplus;
- 2) The debtor's employment history, ability to earn, and likelihood of future increases in income;**
- 3) The probable or expected duration of the plan;
- 4) The accuracy of the plan's statements of the debts, expenses and percentage of repayment of unsecured debt, and whether any inaccuracies are an attempt to mislead the court;**
- 5) The extent of preferential treatment between classes of creditors;

- 6) The extent to which secured claims are modified;
- 7) The type of debt sought to be discharged, and whether any such debt is nondischargeable in Chapter 7;
- 8) The existence of special circumstances such as inordinate medical expenses;
- 9) The frequency with which the debtor has sought relief under the Bankruptcy code;**
- 10) The motivation and sincerity of the debtor in seeking Chapter 13 relief;**
and
- 11) The burden which the plan's administration would place upon the trustee.

In re Warren, 89 B.R. 87, 93 (B.A.P. 9th Cir. 1988) (quoting *In re Brock*, 47 B.R. 167, 169 (Bankr. S.D. Cal. 1985) (emphasis added).

Here, Creditor argues that this is the second bankruptcy filed by Debtor in order to stall a foreclosure. Creditor also contends that a review of Debtor's petition do not make sense and appears that Debtor has no intention of reorganizing.

Moreover, as stated by Trustee, Creditor points the court to Debtor's failure to attend the meeting of creditors and argues that this shows that Debtor is not taking the bankruptcy process seriously.

Creditor asserts that this failure to prosecute the case is proof of Debtor's bad faith.

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 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 Objection to the Chapter 13 Plan filed by Virinder Grewal, as to an undivided 20% interest and Scott R. Williams and Anastasie C. Martin Trustees of the Williams Trust Dated August 19, 2014 as to an undivided 19.20% interest and PENSCO Trust Company LLC Custodian FBO James B. Martin IRA as to an undivided 12.667% interest and PENSCO Trust Company LLC Custodian FBO Claire M. Martin IRA as to an undivided 8.667% interest and PENSCO Trust Company LLC Custodian FBO ANASTASIE MARTIN IRA as to an undivided 8.533% interest and Gurdev S. Grewal as to an undivided 7.333% interest and Michael J. Maderos and Catherine Maderos, Trustees of The Maderos Family Trust Dated 7/29/1999 as to an undivided 7% interest and Brian J. Tillinghast as to an undivided 7% interest and Equity Trust Company Custodian FBO Balwant K Grewal IRA as to an undivided 6% interest and PENSCO Trust Company LLC

Custodian FBO SCOTT R. WILLIAMS IRA, as to an undivided 3.60% interest (“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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on February 17, 2021. By the court's calculation, 14 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor (*pro se*) has not filed opposition. If the *pro se* Debtor appears at the hearing, the court shall consider the arguments presented and determine if further proceedings for this Motion are appropriate.

The Motion to Dismiss is ~~XXXXX~~.

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. the debtor, Lucia Solorio ("Debtor") Failed to appear at the Meeting of Creditors.
2. Debtor may be over the debt limits for Chapter 13 relief.
3. Debtor did not use the correct plan form.
4. Debtor failed to correctly filed the petition documents.
5. Debtor failed to provide business documents.

DISCUSSION

Failed to Appear at § 341 Meeting of Creditors

Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay that is prejudicial to creditors and is cause to dismiss the case. 11 U.S.C. § 1307(c)(1).

Over Secured Debt Limit

Debtor is over the secured debt limit, disqualifying Debtor from Chapter 13 relief. Pursuant to 11 U.S.C. § 109(e), an individual with regular income who owes, on the date of filing of the petition, "noncontingent, liquidated, secured debts" of less than \$1,257,850.00 may be a debtor under Chapter 13. Here, Debtor owes \$1,500,000.00 in secured debt.

Wrong Plan Form Used

Debtor's Amended Plan is based upon a plan form that is no longer effective now that the court has adopted a new plan form as of November 9, 2018. The Amended Plan is based on a prior plan form, which is a violation of Federal Rule of Bankruptcy Procedure 3015.1 and General Order 17-03. Failure to file a plan on the current form is a delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Documents Inaccurate

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). According to trustee, Debtor failed to fill out the various bankruptcy petition documents correctly. Namely, Trustee argues that Debtor failed to state the business name in her petition, did not list all of her assets in Schedules A/B, failed to file the Spousal Waiver, failed to list the secured claim of Ford Motor Creditor and Ally Bank, failed to list creditor with unsecured claim Capital One Bank; did not answer question #2 in Schedule H, failed to attach Business Income/Expense Statement with Schedule I, and failed to identify dependents on Schedule J where she identifies four dependents on Form 122C-1. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Failure to File Documents Related to Business

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

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

11 U.S.C. §§ 521(e)(2)(A)(i), 704(a)(3), 1106(a)(3), 1302(b)(1), 1302(c); FED. R. BANKR. P. 4002(b)(2) & (3). Debtor is required to submit those documents and cooperate with Trustee. 11 U.S.C. § 521(a)(3). Without Debtor submitting all required documents, the court and Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Pending Motion Seeking Relief Pursuant to 11 U.S.C. § 362(d)(4)

A group of creditors have filed a motion seeking relief from the automatic stay. Dckt. 32. The relief requested includes relief pursuant to 11 U.S.C. § 362(d)(4) and the imposition of a waiver of the automatic stay automatically being imposed in future cases filed during the next two years.

The Motion does not state with particularity the grounds upon which the 11 U.S.C. § 362(d)(4) relief is requested, but merely states that payments have not been made as set forth in a declaration. The Motion does state that Debtor has had one prior case in the past year which was dismissed for failure to file documents.

The Declaration of Rick Mendoza, an employee of the loan servicer, (Dckt. 35) appears to be stating what would be necessary grounds to be stated in the Motion (Fed. R. Bankr. P. 9013), including: (1) the principal amount of the secured Note is \$1,500,000; (2) there was state court litigation commenced by Debtor which was ultimately settled; (3) extensions of time were granted Debtor to perform the settlement; (4) the first bankruptcy case was filed and the foreclosure sale had to be postponed; (5) the current bankruptcy case was filed four days before the continued foreclosure sale date; and (6) the obligation of \$1,690,709.59 computed by these Creditors as of January 26, 2021, is due in full on March 1, 2021.

In the Motion (p. 3:15-16; Dckt. 32) the value of \$1,500,000 stated by the Debtor on Schedule A/B (Dckt. 1 at 12) is stated. Thus, Debtor would have to provide for paying at least \$1,500,000 over the five years of a plan. *See In re Collier-Abbott*, 616 B.R. 117 (Bankr. E.D. Cal. 2020), discussing the 11 U.S.C. § 506(a) valuation issues when a debt, secured only by a debtor's residence, comes due in full on the terms of the note during the term of a bankruptcy plan. Even if the secured claim was "only" \$1,500,000, the monthly payment over a five year period with a modest interest rate of only 3.5% would be more than \$27,000 a month.

March 9, 2021 Hearing

At the hearing **xxxxxxx**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 26, 2021. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

<p>The Motion to Confirm the Modified Plan is <u>granted</u>.</p>
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The debtor, Matthew Borre ("Debtor") seeks confirmation of the Modified Plan to make a lump sum payment equal to the remaining payments under the confirmed plan with funds from his girlfriend. Declaration, Dckt. 66. The Modified Plan provides:

1. \$458.00 per month for 17 months
2. \$531.00 per month for 26 months,
3. \$9,050.00 lump sum payment by March 25, 2021 to complete the plan,
and
4. a ten (10) percent dividend to unsecured claims totaling \$61,000.

Modified Plan, Dckt. 65. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response indicating non-opposition on February 19, 2021. Dckt. 68. In turn, Trustee requests that the order confirming the

modified plan state creditors with general unsecured claims shall receive no less than 25%, where according to Trustee's calculations and Debtor's declaration the plan will pay no less than 25% to such creditors.

At the hearing ~~xxxxxxx~~

The Modified Plan, as amended, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

~~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 to Confirm the Modified Chapter 13 Plan filed by the debtor, Matthew Borre ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on January 26, 2021, as amended,~~

~~creditors with general unsecured claims shall receive no less than 25%~~

~~is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on January 29, 2021. By the court's calculation, 39 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Approve Loan Modification is ~~XXXXX~~.

The Motion to Approve Loan Modification filed by Wells Fargo Bank, N.A. ("Creditor") seeks court approval for Rosendo Becerra Velasco and Raquel Gutierrez Velasco ("Debtor") to incur post-petition credit. Creditor, whose claim the Plan provides for in Class 4, has agreed to a loan modification that will reduce Debtor's principal balance from the current \$130,024.36 to \$129,419.55.

According to Creditor's motion, HUD has advanced funds to Wells Fargo in the amount of \$2,196.36 on behalf of Debtors; curing the loan default.

Trustee's Response

On February 23, 2021 Trustee filed a Response noting that the motion does not indicate the months in which Creditor did not receive payment nor Debtor's payment history. Dckt. 26. Moreover, Trustee argues that this type of relief must be requested by the Debtor and Creditor offers no evidence that the Debtor is aware of this motion or the relief sought. *Id.*

DISCUSSION

The Motion is not supported by a Declaration of Debtor. There are no documents filed that 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.

Representation of Debtor

The court's file lists Debtor's current attorney of record as Thomas Gillis. However, Thomas Gillis is, as has been suspended from the practice of law since February 16, 2020.

<http://members.calbar.ca.gov/fal/Licensee/Detail/40186>. The State Bar information concerning Mr. Gillis has been updated with a January 15, 2021, Resignation With Charges Pending having been filed by Mr. Gillis, resigning as a attorney of the State Bar of California. *Id.*

When suspended, the court was notified that Mark Hannon, Esq. was substituting in on Mr. Gillis' cases to continue in that representation. It was further stated that Mr. Hannon had become the principal attorney of Latino Law, Inc. (a recently established law corporation by Mr. Gillis) to provide such services, and that Mr. Hannon was employing another attorney, Mark O'Toole, to assist in the representation. In a recent case, Mr. O'Toole appeared representing a debtor, as the Law Office of Mark O'Toole, with an address the same as Mr. Gillis' and advised the court that he was not doing such as part of Mr. Hannon's law firm.

Neither Mr. Hannon nor Mr. O'Toole have substituted in as counsel for the Debtor in this case, leaving it to appear that Mr. Gillis is their "attorney" of record.

The court appreciates the willingness of Creditor and Creditor's counsel to help move this matter forward and Debtor's access to the HUD program. Such may help the Debtor in saving a residence. But it does not take the place of legal counsel representing the Debtor.

At the hearing ~~XXXXXXXX~~

~~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 Chapter 13 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 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 to Approve Loan Modification filed by Wells Fargo Bank, N.A. ("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 court authorizes Rosendo Becerra Velasco and Raquel Gutierrez Velasco to amend the terms of the loan with Wells Fargo Bank, N.A. ("Creditor"), which is secured by the real property commonly known as 8667 Hillmon Ct, Sacramento, California, on such terms as stated in the Modification Agreement filed as Exhibit 1 in support of the Motion (Dckt. 24).~~

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—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and parties requesting special notice on January 29, 2021. By the court's calculation, 39 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.

<p>The Motion to Approve Loan Modification is xxxxx.</p>
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The Motion to Approve Loan Modification filed by Wells Fargo Bank, N.A. ("Creditor") seeks court approval for Jose Espino and Michel Reyes ("Debtor") to incur post-petition credit. Creditor, whose claim the Plan provides for in Class 4, has agreed to a loan modification that will reduce Debtor's Initial Principal Balance from the current \$144,790.22 to \$142,956.01.

DISCUSSION

The Motion is not supported by a Declaration of Debtor. There are no documents filed that 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.

Representation of Debtor

The court's file lists Debtor's current attorney of record as Thomas Gillis. However, Thomas Gillis is, as has been suspended from the practice of law since February 16, 2020.

<http://members.calbar.ca.gov/fal/Licensee/Detail/40186>. The State Bar information concerning Mr. Gillis has been updated with a January 15, 2021, Resignation With Charges Pending having been filed by Mr. Gillis, resigning as a attorney of the State Bar of California. *Id.*

When suspended, the court was notified that Mark Hannon, Esq. was substituting in on Mr. Gillis' cases to continue in that representation. It was further stated that Mr. Hannon had become the principal attorney of Latino Law, Inc. (a recently established law corporation by Mr. Gillis) to provide such services, and that Mr. Hannon was employing another attorney, Mark O'Toole, to assist in the representation. In a recent case, Mr. O'Toole appeared representing a debtor, as the Law Office of Mark O'Toole, with an address the same as Mr. Gillis' and advised the court that he was not doing such as part of Mr. Hannon's law firm.

Neither Mr. Hannon nor Mr. O'Toole have substituted in as counsel for the Debtor in this case, leaving it to appear that Mr. Gillis is their "attorney" of record.

The court appreciates the willingness of Creditor and Creditor's counsel to help move this matter forward and Debtor's access to the HUD program. Such may help the Debtor in saving a residence. But it does not take the place of legal counsel representing the Debtor.

At the hearing ~~xxxxxxx~~

~~This post-petition financing is not consistent with the Chapter 13 Plan in this case and with Debtor's ability to fund that Plan. There being no objection from the Chapter 13 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 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 to Approve Loan Modification filed by Wells Fargo Bank, N.A. ("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 court authorizes Jose Espino and Michel Reyes to amend the terms of the loan with Wells Fargo Bank, N.A. ("Creditor"); which is secured by the real property commonly known as 1308 Gracelyn Street, Orland, California, on such terms as stated in the Modification Agreement filed as Exhibit 1 in support of the Motion (Dekt. 103).~~

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 1, 2021. By the court’s calculation, 36 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

The Motion to Confirm the Modified Plan is XXXXX.

The debtors, Andres Marcelino Herrera and Yvette Herrera (“Debtor”), seek confirmation of the Modified Plan to account for changes in their financial circumstances, mainly related to the purchase of a new vehicle and the removal of Debtor Yvette’s deferred compensation. Declaration, Dckt. 36. The Modified Plan provides payments of \$1,450 for sixty (60) months, and a forty (40) percent dividend to unsecured claims totaling \$73,150.07. Modified Plan, Dckt. 138. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE’S NON-OPPOSITION

On February 18, 2021, the Chapter 13 Trustee, David Cusick (“Trustee”), filed a Non-Opposition where Debtors are current in plan payments and address the circumstances that require the modification. Dckt. 46.

CREDITOR’S OPPOSITION

Cab West LLC (“Lessor”) holding a secured claim filed a Limited Opposition on February 19, 2021. Dckt. 48. Lessor opposes the confirmation on the following grounds:

- A. Lessor asserts that the lease need not be assumed or rejected in Debtor's modified plan.
- B. Lessor is concerned about the *res judicata* effect of a confirmed plan that includes a post-petition lease.
- C. Lessor is also concerned over whether the automatic stay applies if the lease is assumed and whether the obligations related to this lease are subject to discharge.
- D. An agreement was reached with Debtor's counsel to add language in the order confirming plan clarifying that Debtor will not change, alter, or modify the lease in any way to address Lessor's concerns. This including that the lease is not subject to the automatic stay and not subject to discharge, so long as the court finds it appropriate.

DISCUSSION

The court has reviewed the Supplemental Pleading filed with the plan. Dckt. 44. Debtor has listed this post-petition lease as a claim to be provided for in Section 4.02 (leases) of the Plan. Section 4 of the Plan provides:

Section 4. Executory Contracts And Unexpired Leases

4.01. Debtor assumes the executory contracts and unexpired leases listed below. Debtor shall pay directly to the other party to the executory contract or unexpired lease, before and after confirmation of this plan and whether or not a proof of claim is filed, all post-petition monthly payments required by the lease or contract. Unless a different treatment is required by 11 U.S.C. § 365(b)(1) and is set out in section 7, the Nonstandard Provisions, pre-petition arrears shall be paid in full. Trustee shall pay the monthly dividend specified in the table below on account of those arrears.

4.02. Any executory contract or unexpired lease not listed in the table below is rejected.

Name of Other Party to Executory Contract/ Unexpired Lease	Post-Petition Monthly Payment	Pre-petition Arrears	Arrearage Dividend
1. Ford Motor Co./2016 Ford Escape	\$278.00	\$0.00	\$0.00
2. Secured Self Storage/Storage Unit	\$180.00	\$0.00	\$0.00
3. Ford Motor Credit/2020 Ford Escape	\$468.00	\$0.00	\$0.00
		Total	\$

The lease at issue is the post-petition lease for the 2020 Ford Escape. Neither Creditor nor Debtor provide the court with any legal authority or analysis on the need to assume a post-petition lease if it is entered into prior to confirmation of a Chapter 13 Plan.

The Bankruptcy Code provides in 11 U.S.C. § 1305(a) that a creditor is allowed a claim in the bankruptcy case for a post-petition debt as follows (emphasis added):

§ 1305. Filing and allowance of postpetition claims

(a) A proof of claim may be filed by any entity that holds a claim against the debtor—

(1) for taxes that become payable to a governmental unit while the case is pending; or

(2) that is a **consumer debt, that arises after the date of the order for relief** under this chapter, and that is **for property** or services **necessary** for the debtor's **performance under the plan**.

The claim is to be allowed or disallowed as if it were a pre-petition claim (with certain limited exceptions). 11 U.S.C. § 1305(b), (c).

It would appear that is creditor (a) wants it lease payments to be made and (b) doesn't want to have the obligations under the lease discharged, assumption of the lease appears to be required.

At the hearing, **XXXXXXX**

~~The Modified Plan, as amended, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.~~

~~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 to Confirm the Modified Chapter 13 Plan filed by the debtors, Andres Marcelino Herrera and Yvette Herrera ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the Motion is granted, and Debtor's Modified Chapter 13 Plan, as amended, filed on February 1, 2021,~~

~~**XXXXXXXXXXXX**~~

~~is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on February 17, 2021. By the court’s calculation, 20 days’ notice was provided. 14 days’ notice is required.

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

<p>The Objection to Confirmation of Plan is overruled.</p>

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

- A. The Plan is not Debtor’s Best Effort.
- B. Neither the Plan nor the Schedules filed in support have been signed by Debtor.

DISCUSSION

Trustee’s objections are well-taken.

Good-Faith Filing

Trustee alleges that the Plan was not filed in good faith. *See* 11 U.S.C. § 1325(a)(3). Good

faith depends on the totality of the circumstances. *In re Warren*, 89 B.R. 87 (B.A.P. 9th Cir. 1988). Thus, the Plan may not be confirmed. Factors to be considered in determining good faith include, but are not limited to:

- 1) The amount of the proposed payments and the amounts of the debtor's surplus;
- 2) The debtor's employment history, ability to earn, and likelihood of future increases in income;**
- 3) The probable or expected duration of the plan;
- 4) The accuracy of the plan's statements of the debts, expenses and percentage of repayment of unsecured debt, and whether any inaccuracies are an attempt to mislead the court;**
- 5) The extent of preferential treatment between classes of creditors;
- 6) The extent to which secured claims are modified;
- 7) The type of debt sought to be discharged, and whether any such debt is nondischargeable in Chapter 7;
- 8) The existence of special circumstances such as inordinate medical expenses;
- 9) The frequency with which the debtor has sought relief under the Bankruptcy code;**
- 10) The motivation and sincerity of the debtor in seeking Chapter 13 relief;**
and
- 11) The burden which the plan's administration would place upon the trustee.

In re Warren, 89 B.R. 87, 93 (B.A.P. 9th Cir. 1988) (quoting *In re Brock*, 47 B.R. 167, 169 (Bankr. S.D. Cal. 1985) (emphasis added)).

Here, Trustee asserts that at the Meeting of Creditors Debtor testified that he has a 401k loan that he is in the process of repaying and that the loan will be paid off during the life of the Plan. However, the Plan fails to specify an increase in the plan payment as a direct result of the increase of the Debtor's monthly net income due to cessation of the payments on this loan.

Debtor filed a Response on February 24, 2021 addressing Trustee's objections. Dckt. 26. Debtor suggests that the order confirming the plan include language stating:

Plan payment for month 16 shall be \$3,304.02. The Plan payments for months 17-60 shall be \$3,862.46/month.

Dckt. 27. Debtor explaining that this should represent as step-up in the plan payments calculated to address the cessation of payments for the retirement loan.

Lack of Signature

Trustee alleges that the plan does not comply with Local Bankruptcy Rule 9004-1(c)(1)(B) because neither the plan nor the schedules filed on December 24, 2020 contains the debtor's original wet signature or electronic signature.

In the Response, Debtor states having filed the documents bearing an electronic signature. Dckt. 26. A review of the docket shows that the newly filed documents contain Debtor's signature. Dckt. 24.

~~Debtor having addressed Trustee's objections, the Plan, as amended, complies with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained, and the Plan is confirmed.~~

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

~~**IT IS ORDERED** that the Objection is overruled, and Loren Ross Godfrey's ("Debtor") Chapter 13 Plan, as amended, filed on February 24, 2021, to provide:~~

~~Plan payment for month 16 shall be \$3,304.02. The Plan payments for months 17-60 shall be \$3,3862.46/month;~~

~~and~~

~~The secured claim of SchoolsFirst Federal Credit Union, for which the collateral is a 2014 Ford Escape, VIN ending in 2442, is provided for as a Class 3 Claim with the surrender of the collateral and termination of the automatic stay~~

~~is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and Chapter 13 Trustee on February 5, 2021. By the court's calculation, 32 days' notice was provided. 14 days' notice is required.

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

-----.

The Objection to Confirmation of Plan is XXXXX.

Schoolsfirst Federal Credit Union ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that Debtor is past due on payments to Creditor for secured property.

DISCUSSION

Default in Adequate Protection Payments

Creditor alleges that Debtor has not remitted monthly adequate protection payments of \$180.00, as required by the proposed plan filed on December 24, 2020. Debtor's delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor's Response

On February 25, 2021, Debtor filed a Response to Creditor's Objection to Confirmation.

Dckt. 29. Debtor asserts have already notified Creditor of the intention to surrender the property. Debtor has also already requested that Creditor make the necessary arrangements to repossess the property. Having already surrendered the property, Debtor contends that the Creditor's claim be treated as a class 3 claim, not a class 4.

At the hearing Debtor amended the Plan to provide ~~XXXXXXXX~~

~~Debtor having addressed Trustee's objections, the Plan, as amended, complies with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained, and the Plan is confirmed~~

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

~~**IT IS ORDERED** that the Objection is overruled, and Loren Ross Godfrey's ("Debtor") Chapter 13 Plan, as amended, filed on February 24, 2021, to provide:~~

~~Plan payment for month 16 shall be \$3,304.02. The Plan payments for months 17-60 shall be \$3,3862.46/month;~~

~~and~~

~~The secured claim of SchoolsFirst Federal Credit Union, for which the collateral is a 2014 Ford Escape, VIN ending in 2442, is provided for as a Class 3 Claim with the surrender of the collateral and termination of the automatic stay~~

~~is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 2, 2021. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

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

The debtor, Tasha Renee Robinson ("Debtor") seeks confirmation of the Modified Plan to excuse a trustee payment delinquency. Declaration, Dckt. 46. The Modified Plan provides \$332.00 to be paid through 53 months, and a zero (0) percent dividend to unsecured claims totaling \$110,590.64. Modified Plan, Dckt. 47. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee") filed an Opposition on February 2, 2018. Dckt. 51. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor is delinquent in plan payments; and
- B. Debtor's Supplemental Schedule J does not account for a potential loan payment.

DISCUSSION

The Chapter 13 Trustee asserts that Debtor is \$332.00 delinquent in plan payments, which represents one month of the \$332.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

The Chapter 13 Trustee asserts that Debtor's Supplemental Schedule J does not account for a potential loan payment. Debtor filed a Motion to Incur Debt, which was heard on February 23, 2021. At the hearing this motion was denied. Trustee's Opposition based on the potential loan payment is moot.

Debtor being delinquent in plan payments, the Modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is not confirmed.

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 to Confirm the Modified Chapter 13 Plan filed by the debtor, Tasha Renee Robinson ("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.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 14, 2021. By the court's calculation, 54 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). The defaults of the non-responding parties and other parties in interest are entered.

<p>The Motion to Approve Loan Modification is granted.</p>

The Motion to Approve Loan Modification filed by Bryan Matthew Lee ("Debtor") seeks court approval for Debtor to incur post-petition credit. Caliber Home Loans ("Creditor"), whose claim the Plan provides for in Class 4, has agreed to a loan modification that will reduce Debtor's mortgage principal from the current \$559,499.68 to \$556,773.89. The modification will cure Debtor's pre-petition mortgage arrears.

The Motion is supported by the Declaration of Bryan Matthew Lee. Dckt. 39. 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.

Trustee's Response

On February 19, 2021 Trustee filed a Response stating non-opposition to terms of the loan modification but noting that there is a discrepancy between the monthly total amount listed in the motion, which totals \$3,410, where as the Declaration and the Agreement states a monthly total payment of \$3,355.00. Dckt. 49.

At the hearing Debtor clarified xxxxxxxx

DISCUSSION

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 Chapter 13 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 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 to Approve Loan Modification filed by Bryan Matthew Lee ("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 court authorizes Bryan Matthew Lee to amend the terms of the loan with Caliber Home Loans ("Creditor"), which is secured by the real property commonly known as 2526 Parkercrest Way, Roseville, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion (Dckt. 38).~~

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 14, 2021. By the court's calculation, 54 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the 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).

<p>The Motion to Confirm the Plan is XXXXX.</p>

The debtor, Bryan Matthew Lee ("Debtor") seeks confirmation of the Chapter 13 Plan. The Plan provides for monthly plan payments of \$870.00 for 60 months, and a 0% dividend to unsecured claims totaling \$149,477.00. Plan, Dckt. 42. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on February 17, 2021. Dckt. 46. Trustee opposes confirmation of the Plan on the basis that:

- A. Plan relies on loan modification; and
- B. Chapter 13 documents are inaccurate.

DISCUSSION

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor cannot afford to make the payments or comply with the Plan unless a pending loan

modification is approved. Caliber Home Loans (“Creditor”) is listed in class 4 for real property but the claim reflects \$21,612.81 in arrears. Claim 5-1. On February 9, 2021, Creditor amended their claim to show no amount in arrears. Claim 5-2. The Motion to Approve Loan Modification and Incur Debt are scheduled to be heard concurrently with the instant motion. If the loan modification is not granted, the Plan will take 84 months to complete.

Trustee raised that Debtor has not amended Schedule H to identify his non-filing spouse as a co-debtor for debts listed on Schedules D, E, and F. The Debtor admitted at the First Meeting of Creditors that his non-filing spouse is a co-debtor on several debts. Without an accurate picture of Debtor’s financial reality, the court cannot determine whether the Plan is confirmable.

The Plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

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 to Confirm the Chapter 13 Plan filed by the debtor, Bryan Matthew Lee (“Debtor”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Confirm the Plan is **xxxxxx**.

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.

Sufficient Notice **Not** Provided. Moving party failed to provide certificate of service. Thus the Court is unable to assess if the proper parties have been served.

At the hearing **xxxxxxx**

The Motion to Sell Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing -----

The Motion to Sell Property is granted.

The Bankruptcy Code permits James Flimen Biggart, 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 15009 Lago Drive, Rancho Murieta, California ("Property").

The proposed purchaser of the Property is William R. Davis and Diana Roxanne Josse, and the terms of the sale are:

- A. The purchase price is \$569,900.00.
- B. Buyer to provide a deposit of \$10,000.00
- C. An additional payment of \$49,690.00 will be paid through the close of escrow.

- D. The close of escrow shall be on or before March 16, 2021.
- E. Buyer and Debtor shall split escrow fees.
- F. Debtor shall pay the natural hazard report, pest inspection and any repairs, smoke and carbon monoxide alarm installation, title insurance, county transfer taxes, up to \$500.00 of upgraded home warranty plan for air conditioning.
- G. Buyer shall pay any Homeowner's Association transfer fees, any transfer fee for RMA Exclusive use and transfer fees, CSD transfer fee.

Trustee's Response

On March 4, 2021, the Chapter 13 Trustee filed Response stating non-opposition to the sale but noting that Debtor failed to provide an Estimated Settlement Statement to support the stated amount of proceeds or verification of the amount allotted towards the Real Estate Broker's compensation. Dckt. 40. Moreover, although Debtor states in the motion that the proceeds will allow Debtor to pay all creditors, the motion does not specify if the funds are not be submitted to the Trustee for disbursement or are to be held until further order from the court. *Id.*

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: xxxxxxxxxxxxxxxxxx.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the purchase price is more than the scheduled value of the property and the proceeds will allow Debtor to pay all other creditors in full sooner than the originally proposed five year payment period.

Movant has estimated that a five percent broker's commission from the sale of the Property will equal approximately \$29,845.00. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than five percent commission.

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 James Flimen Biggart, Chapter 13 Debtor, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that James Flimen Biggart, Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to William R. Davis and Diana Roxanne Josse or nominee ("Buyer"), the Property commonly known as 15009 Lago Drive, Rancho Murieta, California ("Property"), on the following terms:

- A. The Property shall be sold to Buyer for \$596,900.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 37, and as further provided in this Order.
- B. 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 to effectuate the sale.
- C. Chapter 13 Debtor is authorized to execute any and all documents reasonably necessary to effectuate the sale.
- D. Chapter 13 Debtor is authorized to pay a real estate broker's commission in an amount not more than 5 percent of the actual purchase price upon consummation of the sale. The 5 percent commission shall be paid to Chapter 13 Debtor's broker, Rancho Murieta Homes & Land Inc.
- F. 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.

FINAL RULINGS

23. [21-20405-E-13](#) [MRL-1](#) ROSALINDA RIVERA
Mikalah Liviakis MOTION TO VALUE COLLATERAL OF
AMERICREDIT FINANCIAL SERVICES,
INC.
2-7-21 [\[10\]](#)

Final Ruling: No appearance at the March 9, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on February 8, 2021. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Americredit Financial Services, Inc (“Creditor”) is granted, and Creditor’s secured claim is determined to have a value of \$10,500.00.

The Motion filed by Rosalinda Jessica Rivera (“Debtor”) to value the secured claim of Americredit Financial Services, Inc (“Creditor”) is accompanied by Debtor’s declaration. Declaration, Dckt. 12. Debtor is the owner of a 2016 Hyundai Elantra with 73k miles (“Vehicle”). Debtor seeks to value the Vehicle at a replacement value of \$10,500.00 as of the petition filing date. As the owner, Debtor’s opinion of value is evidence of the asset’s value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

DISCUSSION

The lien on the Vehicle’s title secures a purchase-money loan incurred on November 22,

2015, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$13,145.04. Proof of Claim, No. 2-1. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of \$10,500.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue 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 to Value Collateral and Secured Claim filed by Rosalinda Jessica Rivera ("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 Americredit Financial Services, Inc. ("Creditor") secured by an asset described as 2016 Hyundai Elantra ("Vehicle") is determined to be a secured claim in the amount of \$10,500.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$10,500.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

Final Ruling: No appearance at the March 9, 2021 hearing is required.

Local Rule 3007-1 Objection to Claim—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor, Debtor’s Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on January 28, 2021. By the court’s calculation, 40 days’ notice was provided. 44 days’ notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days’ notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days’ notice for written opposition).

The Creditor has filed a Response (addressed below) in which Creditor concurs with the requested “correction” to its Proof of Claim. In light of the response having been filed, the court shortens the required notice period to the time actually given.

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Objection to Proof of Claim Number 9-2 of U.S. Bank National Association is sustained.

Fouad Afif Mizyed, Chapter 13 Debtor, (“Objector”) requests that the court disallow the claim of U.S. Bank National Association (“Creditor”), Proof of Claim No. 9 (“Claim”), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of \$458,332.30. Objector asserts that \$4,238.99 of the \$27,390.05 amount necessary to cure default is erroneous and requests the court disallow this amount from the creditors claim.

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial evidence to overcome the *prima facie*

validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *In re Austin*, 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

Objector asserts that Amended Proof of Claim No. 9-2 filed by Creditor should not exceed \$23,151.06 for the amount necessary to cure any default as of the date of the petition. Amended Proof of Claim 9-2 shows the amount necessary to cure any default as \$27,390.05. Objector asserts that this discrepancy is a result of including attorney fees in the amount of \$4,238.99 from a "wrongful" initiation of foreclosure.

In their Response, Dckt. 66, Creditor agrees, without any admission that the Notice of Default was improperly recorded, or the attorney fees not incurred, to remove those fees and costs from its Amended Proof of Claim, and has amended its Amended Proof of Claim accordingly. Claim No. 9-3 shows the amount necessary to cure any default as of the date of the petition as \$23,151.06, the amount that Objector sought by way of their objection.

Based on Creditor having filed an Amended Proof of Claim, the Objection to the Proof of Claim 9-2 is sustained. This without having any effect on Proof of Claim 9-3.

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 Objection to Claim of U.S. Bank National Association ("Creditor"), filed in this case by Fouad Afif Mizyed, Chapter 13 Debtor, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 9-2 of Creditor is sustained and said claim is disallowed in the amount of \$4,238.99, which was stated to be part of the prepetition arrearage of \$27,390.05. No other disallowance of Claim 9-2 is ordered.

Final Ruling: No appearance at the March 9, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, and Debtor's Attorney on February 17, 2021. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

The hearing on the Objection to Confirmation of Plan is continued to 2:00 p.m. on March 23, 2021, to be conducted in conjunction with the Motion to Value.

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that Stephanie Ann Powers ("Debtor"), the Plan relies on a Motion to Value Collateral not yet filed.

DISCUSSION

Trustee's objections are well-taken.

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Travis Credit Union. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

A review of the docket shows that on February 11, 2021 Debtor filed a Motion to Value the Secured Claim of Travis Credit Union. Dckt. 15. The motion is set to be heard on March 23, 2021. Debtor requests that this matter be continued to allow the Motion to Value Collateral be heard.

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

IT IS ORDERED that the hearing on the Objection to Confirmation of Plan is continued to **2:00 p.m. on March 23, 2021**, to be conducted in conjunction with the Motion to Value.

26. [19-22340-E-13](#) [PGM-3](#) **JOSHUA/CONNIE NORMAN** **MOTION FOR COMPENSATION FOR**
Peter Macaluso **PETER G. MACALUSO, DEBTORS**
ATTORNEY(S)
2-9-21 [45]

Final Ruling: No appearance at the March 9, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 9, 2021. By the court’s calculation, 28 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days’ notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days’ notice for written opposition).

The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). 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 G. Macaluso, the Attorney (“Applicant”) for Joshua Lynn Norman and Connie Lynn Norman, the Chapter 13 Debtor (“Client”), makes a Request for the Additional Allowance of Fees and Expenses in this case.

Fees are requested for the period August 24, 2020, through October 28, 2020. Applicant

requests fees in the amount of \$1,230.00.

APPLICABLE LAW

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or

(ii) services that were not—

(I) reasonably likely to benefit the debtor's estate;

(II) necessary to the administration of the case.

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

11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

Reasonable Fees

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

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

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

Reasonable Billing Judgment

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

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

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

A review of the application shows that Applicant’s for the Estate include review of Motion to

Dismiss, meeting with Debtor regarding motion, preparing new plan, opposing the Motion to Dismiss, preparing, filing, and appearing at the hearing for Motion to Modify, and preparing order confirming the modified plan. The court finds the services were beneficial to Client and the Estate and were reasonable.

“No-Look” Fees

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

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

...

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

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

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

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

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed \$4,000.00 in

attorneys' fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 14. Applicant prepared the order confirming the Plan.

Lodestar Analysis

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

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

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 reviewed Motion to Dismiss, met with clients to discuss the Motion to Dismiss, prepared and filed an Opposition to Motion to Dismiss, and reviewed ruling on Motion to Dismiss.

Motion to Modify: Applicant spent 2.7 hours in this category. Applicant met with clients to formulate new Plan, prepared and filed Motion to Modify, reviewed Trustee's Response to Motion to Modify, appeared for hearing on Motion to Modify, and sent Order on Motion to Modify to Trustee.

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 G. Macaluso	4.0 hrs	\$300.00	\$1,200.00
Legal Assistant	0.4 hr	\$75.00	\$30.00
Total Fees for Period of Application			\$1,230.00

FEES AND COSTS & EXPENSES ALLOWED

Fees

The unique facts surrounding the case, including review of Motion to Dismiss, meeting with Debtor regarding motion, preparing new plan, opposing the Motion to Dismiss, preparing, filing, and appearing at the hearing for Motion to Modify, and preparing order confirming the modified plan, raise substantial and unanticipated work for the benefit of the Estate, Debtor, and parties in interest. The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. The request for additional fees in the amount of \$1,230.00 is approved pursuant to 11 U.S.C. § 330 and authorized to be paid by David Cusick (“the Chapter 13 Trustee”) from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

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

Fees	\$1,230.00
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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 G. Macaluso (“Applicant”), Attorney having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Peter G. Macaluso, Professional Employed by Joshua Lynn Norman and

Connie Lynn Norman (“Debtor”)

Fees in the amount of \$1,230.00

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

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

27. [19-20645-E-13](#) **ERNEST JACKSON** **MOTION FOR COMPENSATION FOR**
[MET-3](#) **Mary Ellen Terranella** **MARY ELLEN TERRANELLA,**
 DEBTORS ATTORNEY(S)
 1-28-21 [44]

Final Ruling: No appearance at the March 9, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 28, 2021. By the court’s calculation, 40 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days’ notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days’ notice for written opposition).

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

Mary Ellen Terranella, the Attorney (“Applicant”) for Ernest Nathaniel Jackson, the Chapter 13 Debtor (“Client”), makes a Request for the Additional Allowance of Fees and Expenses in this case.

Fees are requested for the period January 31, 2020, through March 9, 2021. Applicant requests fees in the amount of \$2,800.00 and costs in the amount of \$39.56.

APPLICABLE LAW

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or

(ii) services that were not—

(I) reasonably likely to benefit the debtor's estate;

(II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). An attorney must “demonstrate only that the services were reasonably likely to benefit the estate at the time rendered,” not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet)*, 251

B.R. 103, 108 (B.A.P. 9th Cir. 2000)). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

Reasonable Fees

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

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

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

Reasonable Billing Judgment

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

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

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

A review of the application shows that Applicant's for the Estate include prepared and filed modified plan and Motion to Approve Modified Plan. The court finds the services were beneficial to Client and the Estate and were reasonable.

"No-Look" Fees

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

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

...

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

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

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

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

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed \$4,000.00 in

attorneys' fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 22. Applicant prepared the order confirming the Plan.

Lodestar Analysis

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

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

FEES AND COSTS & EXPENSES 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 Approve Modified Plan: Applicant spent 8 hours in this category. Applicant discussed potential dismissal or modification of plan with client, prepared and filed modified plan, met with client over modified plan, filed Motion to Approve Modified Plan, reviewed Trustees response, and prepared order on Motion to Modify.

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
Mary Ellen Terranella	8	\$350.00	\$2,800.00
Total Fees for Period of Application			\$2,800.00

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$39.56 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Postage for 43 copies	\$0.92	\$39.56
Total Costs Requested in Application		\$39.56

FEES AND COSTS & EXPENSES ALLOWED

Fees

The unique facts surrounding the case, including prepared and filed modified plan and Motion to Approve Modified Plan, raise substantial and unanticipated work for the benefit of the Estate, Debtor, and parties in interest. The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. The request for additional fees in the amount of \$2,800.00 is approved pursuant to 11 U.S.C. § 330 and authorized to be paid by David Cusick (“the Chapter 13 Trustee”) from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

Costs & Expenses

Costs in the amount of \$39.56 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

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

Fees	\$2,800.00
Costs and Expenses	\$39.56

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 Mary Ellen Terranella (“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 Mary Ellen Terranella is allowed the following fees and expenses as a professional of the Estate:

Mary Ellen Terranella, Professional Employed by Ernest Nathaniel Jackson (“Debtor”)

Fees in the amount of \$2,800.00

Expenses in the amount of \$38.96,

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

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

28. [20-25057](#)-E-13 **DAVID FLETCHER**
[DNL](#)-6 **Douglas Jacobs**
28 thru 30

**MOTION FOR COMPENSATION BY
THE LAW OFFICE OF DESMOND,
NOLAN, LIVAICH, AND
CUNNINGHAM FOR J.
RUSSELL CUNNINGHAM, TRUSTEES
ATTORNEY(S)
2-2-21 [\[117\]](#)**

Final Ruling: No appearance at the March 9, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 1, 2021. By the court’s calculation, 36 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days’ notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days’ notice for written opposition).

The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). 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.
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Desmond, Nolan, Livaich & Cunningham, the Attorney (“Applicant”) for Kimberly J. Husted, the Chapter 7 Trustee (“Client”) in this case before it was converted to Chapter 13, makes a Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period December 1, 2020, through January 14, 2021. The order of the court approving employment of Applicant was entered on December 2, 2020. Dckt. 26. Applicant requests fees in the amount of \$3,833.80 and costs in the amount of \$166.20.

Trustee does not oppose the fees sought by Applicant. Dckt. 139.

APPLICABLE LAW

Reasonable Fees

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

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

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

A review of the application shows that Applicant's services for the Estate include assessing Debtor's business, assessing Debtor's assets, approving sale of property, and reviewing business's bank records. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Asset Analysis and Business Operations: Applicant spent 3.8 hours in this category.

Asset Disposition: Applicant spent 3.4 hours in this category.

Contested Matters: Applicant spent 3.3 hours in this category.

Fee/Employment Applications: Applicant spent 2.2 hours in this category.

Case Administration: Applicant spent 0.7 hours in this category.

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
J. Russell Cunningham, Partner	1.80	\$425.00	\$765.00

Nicholas L. Kohlmeyer, Associate	11.70	\$275.00	\$3,217.50
Total Fees for Period of Application			\$3,982.50

Applicant has agreed to cap its request for compensation at \$3,833.80, and has calculated a blended hourly rate of \$286.10 by dividing the total fees billed by attorneys and the total number of hours recorded by attorneys.

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$166.20 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Photocopies	\$0.10	\$18.70
Postage		\$36.50
Advances		\$111.00
Total Costs Requested in Application		\$166.20

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. Final Fees in the amount of \$3,833.80 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

Final Costs in the amount of \$166.20 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

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

Fees	\$3,833.80
Costs and Expenses	\$166.20

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

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

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

The Motion for Allowance of Fees and Expenses filed by Desmond, Nolan, Livaich & Cunningham (“Applicant”), Attorney for Kimberly J. Husted, the Chapter 7 Trustee, (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Desmond, Nolan, Livaich & Cunningham is allowed the following fees and expenses as a professional of the Estate:

Desmond, Nolan, Livaich & Cunningham, Professional employed by the Chapter 7 Trustee

Fees in the amount of \$3,833.80
Expenses in the amount of \$166.20,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 7 Trustee

IT IS FURTHER ORDERED that the Chapter 13 Trustee is authorized to pay 100% of the fees and 100% of the costs allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

Final Ruling: No appearance at the March 9, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on February 18, 2021. By the court’s calculation, 19 days’ notice was provided. 14 days’ notice is required.

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

The Debtor has filed a non-opposition to the Objection. The court has determined that oral argument will not be of assistance in rendering a decision in this matter.

<p>The Objection to Confirmation of Plan is sustained.</p>

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

- A. David S. Fletcher (“Debtor”) failed to appear at the Meeting of Creditors.
- B. Debtor may be over debt limit.
- C. Debtor unfairly discriminates against unsecured claims.
- D. Schedules may be inaccurate or incomplete.
- E. Plan payments are coming due.

DEBTOR’S RESPONSE

On February 23, 2021, Debtor filed a Response to the Objection to Confirmation of Plan. Dckt. 137. In the Response, Debtor agrees with Trustee’s objections that the filed plan cannot be confirmed and that the Trustee’s Objection should be sustained. Debtor states they will file an Amended

Plan and motion to confirm that plan.

DISCUSSION

Trustee's objections are well-taken.

Failure to Appear at 341 Meeting

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

The Continued Meeting of Creditors is to be held on March 11, 2021.

Section for 109 Amount of Debt Compliance

Debtor does not qualify for Chapter 13 treatment because the unsecured debt limit in 11 U.S.C. § 109(e) has been exceeded. That section limits Chapter 13 eligibility to individuals with regular income who owe "on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than \$419,275.00 and noncontingent, liquidated, secured debts of less than \$1,257,850.00." Debtor's Summary of Schedules indicates that Debtor was above the limits of § 109(e) as of the petition date, and so, the court will not deny plan confirmation on this basis.

Unfair Discrimination Against Unsecured Claims

Trustee also opposes confirmation due to possible unfair discrimination to unsecured claims under 11 U.S.C. § 1322(b)(1). Debtor proposes to pay 10.47% to unsecured claims; however, Debtor appears to list Hanmi Bank, as a class 2 creditor, to receive \$904.21 per month. On Debtor's Amended Schedule D, Dckt. 86, Debtor lists Hanmi Bank as a creditor who has a claim secured by property, but does not identify any property secured by the claim, and lists the entire amount as unsecured. A claim has been filed on behalf of Hanmi Bank as being unsecured. Claim No. 2.

Documents Filled Out Incorrectly

Trustee argues Debtor has failed to comply with 11 U.S.C. § 521(a)(3) on the basis that Debtor has filled out various documents wrong. Schedule A lists real property with a value of \$170,000.00 while the Motion to Approve Sale of Real Property, Dckt. 33, specifies the sale price as \$190,000.00. Schedule B lists three trucks combined as one asset, does not identify electronics, cash, and is missing assets listed on Schedule A, such as two woodchippers, and business accounts receivable. Schedule I lists income in the amount of \$7,686.00 as net income, but Debtor did not attach any statements that reflect the gross monthly business income. Trustee is unclear if Debtor has included all income and expenses as Schedule I and J do not reflect that Debtor has any health insurance, car registration, or vehicle insurance. Schedule H identifies that Debtor has a spouse, who is a co-debtor, but does not identify any creditors to which they are a co-debtor. Trustee is unclear how Debtor arrived at the income for the business over the last six months, and deductions claims that are being claimed. The Statement of Financial Affairs indicated Debtor owned Fletcher's Landscape from 1992 to its closure in 2020. On Schedule I, Debtor indicates this business as Debtor's sole source of income,

making it unclear if the Debtor's business continues to operate. Several documents have a discrepancy as to how much Debtor's attorney has been paid prior to filing the case and how much is to be paid through the plan.

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

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

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

Final Ruling: No appearance at the March 9, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on February 8, 2021. By the court’s calculation, 29 days’ notice was provided. 14 days’ notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

Debtor has filed a non-opposition to the Trustee’s Objection to Confirmation (Dckt. 137). The court has determined that oral argument will not be of assistance in rendering a decision in this matter.

<p>The Objection to Confirmation of Plan is sustained.</p>

Ford Motor Credit Company LLC (“Creditor”) holding a secured claim opposes confirmation of the Plan on the basis that the proposed Plan fails to provide treatment for their claim and thus Creditor is not adequately protected.

DISCUSSION

Creditor’s objections are well-taken.

Failure to Provide for a Secured Claim

Creditor asserts a claim of \$14,464.16 in this case. Debtor’s Schedule D estimates the amount of Creditor’s claim as \$20,000 and indicates that it is secured by a Certificate of Title over a 2018 Ford F-150. Creditor alleges that the Plan does not comply with the applicable provisions of the bankruptcy code.

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 a debtor adequately fund a plan with future earnings or other future income that is paid over to the Chapter 13 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, however.

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:

- A. Provide a treatment that the debtor and creditor agree to (11 U.S.C. § 1325(a)(5)(A)),
- B. 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
- C. Surrender the collateral for the claim to the creditor (11 U.S.C. § 1325(a)(5)(C)).

Those three possibilities are relevant only if the plan provides for the secured claim, though.

When a plan does not provide for a secured claim, the remedy is not denial of confirmation. Instead, the claimholder may seek termination of the automatic stay so that it may repossess or foreclose upon its collateral. The absence of a plan provision is good evidence that the collateral for the claim is not necessary for the debtor's rehabilitation and that the claim will not be paid. This is cause for relief from the automatic stay. *See* 11 U.S.C. § 362(d)(1).

Notwithstanding the absence of a requirement in 11 U.S.C. § 1322(a) that a plan provide for a secured claim, the fact that this Plan does not provide for respondent Creditor's secured claim raises doubts about the Plan's feasibility. *See* 11 U.S.C. § 1325(a)(6). That is reason to deny confirmation.

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 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 Objection to the Chapter 13 Plan filed by Ford Motor Credit Company LLC ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Final Ruling: No appearance at the March 9, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 9, 2021. By the court’s calculation, 28 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days’ notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days’ notice for written opposition).

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

<p>The Motion for Allowance of Professional Fees is granted.</p>

Peter G. Macaluso, the Attorney (“Applicant”) for Eufemio Ordonia Seguban and Liza Frani Seguban, the Chapter 13 Debtor (“Client”), makes a Request for the Additional Allowance of Fees and Expenses in this case.

Fees are requested for the period June 9, 2020, through October 12, 2020. Applicant requests fees in the amount of \$1,500.00.

The Chapter 13 Trustee does not oppose the fees sought by Applicant. Dckt. 116.

APPLICABLE LAW

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or

(ii) services that were not—

(I) reasonably likely to benefit the debtor's estate;

(II) necessary to the administration of the case.

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

Reasonable Fees

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

A. Were the services authorized?

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

estate at the time they were rendered?

- C. Are the services documented adequately?
- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
- E. Did the attorney exercise reasonable billing judgment?

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

Reasonable Billing Judgment

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

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

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

A review of the application shows that Applicant’s for the Estate include reviewing Trustee’s Motion to Dismiss, met with clients over the Motion, filed the Opposition, appeared at hearing for Motion to Dismiss, filed a Motion to Modify, reviewed Opposition to Motion to Modify, appeared at the hearing, and prepared order on motion to modify. The court finds the services were beneficial to Client and the Estate and were reasonable.

“No-Look” Fees

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

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

...

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

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

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

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

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed \$4,000.00 in attorneys’ fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 44. Applicant prepared the order confirming the Plan.

Lodestar Analysis

If Applicant believes that there has been substantial and unanticipated legal services that have been provided, then such additional fees may be requested as provided in Local Bankruptcy Rule 2016-1(c)(3). The attorney may file a fee application, and the court will consider the fees to be awarded pursuant to 11 U.S.C. §§ 329, 330, and 331. For bankruptcy cases in the Ninth Circuit, “the primary method” to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v.*

Fitzsimmons (In re Yermakov), 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves “multiplying the number of hours reasonably expended by a reasonable hourly rate.” *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). “This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer’s services.” *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). A compensation award based on the lodestar is a presumptively reasonable fee. *In re Manoa Fin. Co.*, 853 F.2d 687, 691 (9th Cir. 1988).

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

FEES AND COSTS & EXPENSES 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 2.9 hours in this category. Applicant reviewed Motion to Dismiss, met with clients regarding motion, prepared Opposition to motion, and appeared at hearing on motion.

Motion to Modify: Applicant spent 4.8 hours in this category. Applicant prepared and filed Motion to Modify, prepared and filed amended Schedules, reviewed Opposition to Motion to Modify, filed Response to Opposition, appeared for hearing on motion, and prepared order on motion.

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Peter G. Macaluso, Partner	7.3	\$300.00	\$2,190.00
Legal Assistant	0.4	\$75.00	\$30.00

Total Fees for Period of Application	\$2,220.00
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While Applicant's total hours spent was 7.7 for which he would bill \$2,220.00, Applicant only requests fees for 5.0 hours, or \$1,500.00.

FEES AND COSTS & EXPENSES ALLOWED

Fees

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

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

Fees	\$1,500.00
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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 G. Macaluso ("Applicant"), Attorney having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Peter G. Macaluso is allowed the following fees and expenses as attorney for the Debtor:

Peter G. Macaluso, Professional Employed by Eufemio Ordonia Seguban and Liza Frani Seguban ("Debtor")

Fees in the amount of \$1,500.00

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

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

32. <u>18-24372</u> -E-13 JOHN MARTIN <u>RJ-6</u> Richard Jare	MOTION FOR COMPENSATION FOR RICHARD JARE, DEBTORS ATTORNEY(S) 2-9-21 <u>[72]</u>
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Final Ruling: No appearance at the March 9, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 9, 2021. By the court’s calculation, 28 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days’ notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days’ notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.
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Richard L. Jare, the Attorney (“Applicant”) for John J. Martin, the Chapter 13 Debtor (“Client”), makes a Request for the Additional Allowance of Fees and Expenses in this case.

Fees are requested for the period September 29, 2020, through February 9, 2021. Applicant requests fees in the amount of \$2,000.00.

The Chapter 13 Trustee does not oppose the fees sought by Applicant. Dckt. 77.

APPLICABLE LAW

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or

(ii) services that were not—

(I) reasonably likely to benefit the debtor's estate;

(II) necessary to the administration of the case.

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

Reasonable Fees

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

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

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

Reasonable Billing Judgment

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

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

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

A review of the application shows that Applicant’s for the Estate include facilitating the sale of Debtor’s residence, which created a large payment to the Trustee. The court finds the services were beneficial to Client and the Estate and were reasonable.

“No-Look” Fees

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

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

...

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

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

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

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

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed \$4,000.00 in attorneys’ fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 50. Applicant prepared the order confirming the Plan.

Lodestar Analysis

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

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

FEES AND COSTS & EXPENSES 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 Authorize Sale: Applicant spent 13.8 hours in this category. Applicant prepared and filed a Motion to Sale, discussed the issue with the client, coordinated escrow and the sale, and was able to secure a large payment to the Trustee.

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
Richard L. Jare	13.8	\$300.00	\$4,140.00

Total Fees for Period of Application	\$4,140.00
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Applicant states that the total for time spent as \$4,120.00, but the court finds that 13.8 hours multiplied by \$300/per hour to be \$4,140.00. This discrepancy is overlooked however as Applicant is only asking for \$2000.00, a more than 50% discount.

FEES AND COSTS & EXPENSES ALLOWED

Fees

The unique facts surrounding the case, including facilitating the sale of Debtor's residence, which created a large payment to the Trustee, raise substantial and unanticipated work for the benefit of the Estate, Debtor, and parties in interest. The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. The request for additional fees in the amount of \$2,000.00 is approved pursuant to 11 U.S.C. § 330 and authorized to be paid by David Cusick ("the Chapter 13 Trustee") from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

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

Fees	\$2,000.00
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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 Richard L. Jare ("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 Richard L. Jare is allowed the following fees and expenses as a professional of the Estate:

Richard L. Jare, Professional Employed by John J. Martin ("Debtor")

Fees in the amount of \$2,000.00

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

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

confirmed Plan.

33. [19-25383-E-13](#) MYANH QUACH MOTION TO DISMISS CASE
[AVN-2](#) Anh Nguyen 1-28-21 [36]

Final Ruling: No appearance at the March 9, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on creditors, Chapter 13 Trustee, parties requesting special service, and Office of the United States Trustee on January 28, 2021. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the 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 Dismiss is dismissed without prejudice as moot, the court having granted the Trustee's Motion to Dismiss this Case. Order, Dckt. 45.

The Chapter 13 Debtor, Myanh Thi Quach ("Debtor"), seeks voluntary dismissal of the case on the basis that the debtor has not been able to make payments pursuant to her plan and cannot fund a plan due to loss of income.

On March 3, 2021, the Trustee's Motion to Dismiss was granted. Dckt. 44. The order dismissing the case was entered on March 5, 2021. Dckt. 46.

Debtor's Motion to Dismiss is dismissed without prejudice as moot, Debtor's case having already been dismissed on March 3, 2021.

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 to Dismiss the Chapter 13 case filed by The Chapter 13 Debtor, Myanh Thi Quach (“Debtor”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, the court having previously entered an order dismissing this case (Dckt. 46) and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is dismissed without prejudice as moot.