

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

**Honorable Ronald H. Sargis**

Chief Bankruptcy Judge

Sacramento, California

**March 12, 2019 at 3:00 p.m.**

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1.	<a href="#"><u>18-26402</u></a> -E-13 <a href="#"><u>MET</u></a> -4	<b>DENNIS/ROBIN COBB</b> <b>Mary Ellen Terranells</b>	<b>CONTINUED MOTION TO CONFIRM PLAN 12-31-18 <a href="#"><u>40</u></a></b>
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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.

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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 December 31, 2018. By the court's calculation, 43 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

<p><b>The Motion to Confirm the Amended Plan is denied.</b></p>
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Dennis Samuel Cobb and Robin Karen Cobb ("Debtor") seek confirmation of the Amended Plan, which would constitute the first confirmed plan in this case. The Amended Plan provides for payments of \$4,132.00 for the first 3 months, \$4,232.00 for the remaining 57 months, and a 0 percent dividend for unsecured claims totaling \$68,501.00. Dckt. 42. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

**March 12, 2019 at 3:00 p.m.**

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## **CREDITOR'S OPPOSITION**

Jason Bower ("Creditor") holding an unsecured claim filed an Opposition on January 22, 2019. Dckt. 48. Creditor requests its asserted unsecured claim in the amount of \$1,400.00 be found nondischargeable on the basis that Creditor was (intentionally) not properly notified of this bankruptcy case.

## **CHAPTER 13 TRUSTEE'S OPPOSITION**

The Chapter 13 Trustee, David Cusick ("Trustee") filed an Opposition on January 29, 2019. Dckt. 49. Trustee opposes confirmation on the basis that Debtor is delinquent \$8,264.00 in plan payments with another payment due February 25, 2019. Trustee further opposes the Motion on the basis that the plan relies on the Motion To Value Collateral of Rent-A-Center set for hearing January 29, 2019.

## **FEBRUARY 12, 2019 HEARING**

At the February 12, 2019 hearing, the Court continued the hearing on the motion to give Debtor an opportunity to cure any defaults to confirm the Chapter 13 plan. Civil Minutes, Dckt. 55. The court also stated that upon confirmation that Debtor is current in plan payments prior to the March 12, 2019 hearing date, the Trustee shall lodge with the court an order granting this Motion and the order confirming the Chapter 13 Plan.

## **DISCUSSION**

### **Trustee's Grounds for Opposition**

Trustee's grounds for opposing the Motion are well-taken.

Debtor is \$8,264.00 delinquent in plan payments, which represents multiple months plan payments. Before the hearing, another plan payment will be due. According to the Chapter 13 Trustee, the Plan in § 2.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Trustee further argues the Debtor's plan is also not feasible because it relies on a Motion To Value. *See* Dckt. 36. However, a review of the docket shows the court has issued an Order granting that Motion and valuing the claim of Rent-A-Center at \$500. Order, Dckt. 53.

### **Creditor's Grounds for Opposition**

Creditor does not actually assert any grounds for opposing confirmation. Rather, Creditor seeks a determination that his claim is nondischargeable (also concluding that confirmation should be denied, but without explaining why).

A determination of nondischargeability is properly presented before the court as a separate adversary proceeding, and not through the guise of opposition to confirmation.

## **Conclusion**

No supplemental pleadings have been filed since the February 12, 2019 hearing.

Debtor is delinquent in plan payments, indicating the plan is not feasible. The Amended Plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by Dennis Samuel Cobb and Robin Karen Cobb (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Confirm the Amended 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.

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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 and Office of the United States Trustee on November 19, 2018. By the court's calculation, 29 days' notice was provided. The Second Amended Proof of Service states the supplemental task billing analysis was served on the Trustee, Office of the United States Trustee, and creditors on January 8, 2019. Dckt. 246.

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.

<p><b>The Motion for Allowance of Professional Fees is denied.</b></p>
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Bonnie Baker, the Attorney ("Applicant") for Mark Jon Hansen and Sarah Ann Monica Hansen, the Chapter 13 Debtor ("Client"), makes a Request for the Additional Allowance of Fees and Expenses in this case. The Motion is styled as one seeking "additional attorney's fees and costs" of counsel for Debtor in this Chapter 13 case. The Motion states the following grounds upon which the requested relief is based:

- A. Applicant seeks allowance of \$40,689.00 in additional fees.
- B. Debtor retained Applicant as counsel and paid a "\$2,000 retainer and \$281 filing fee, with an additional \$1,500 to be paid through the plan."
- C. Applicant received the \$2,000 prior to filing and the remaining \$1,500 was paid when the plan was confirmed.

- D. Applicant now seeks payment of fees for “substantial and unanticipated post filing work that was necessary to obtain a confirmed Plan and resolve extraordinary issues that arose during the case that were not anticipated.”
- E. The additional work related to:
1. Obtaining payment of insurance proceeds for Debtor’s son who was injured and is now paralyzed from injuries incurred while employed by Debtor’s inactive corporation.
  2. Internal Revenue Service tax claims for post-petition taxes
  3. Applicant working to fulfill Debtor’s desire to keep Debtor’s country home and seek a loan modification on the obligation secured by Debtor’s country home.
  4. Addressing failures of Debtor’s post-petition business ventures.
  5. Applicant filing six plans for Debtor.
  6. Applicant “coaching” civil court attorneys for Debtor in various state court litigation concerning the Debtor and Debtor’s paralyzed son.
- F. Applicant seeks fees for 136.3 of time at \$250 an hour for herself as an attorney and 86.6 hours of time at \$75 an hour for paralegal services provided by Applicant’s office.
- G. Applicant computes the fees to be \$34,069.00 in attorneys’ fees and \$6,495.00 in paralegal fees, plus \$125 in costs.

Motion, Dckt. 229.

### **TRUSTEE’S RESPONSE**

The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Response to the Motion on November 28, 2018. Dckt. 234. Trustee notes the following:

1. Movant only served the Chapter 13 and U.S. Trustee and no other party in interest.
2. Movant has not provided a task billing analysis. Rather, Movant has dumped 92 pages of raw billing statements onto the court.
3. Plan funds are available if the fees are approved.

4. Two billing statements provided by Movant are for work performed pre-filing (January and February 2014).
5. Whether Debtor has any objection to fees sought for work performed pre-confirmation (February 2016) is unclear. Trustee does not oppose those fees based on the complexity of the case.
6. Trustee notes that roughly 16 categories can be used to support a billing analysis. Trustee declines to further analyze the billings.

## **REVIEW OF MOTION AT THE DECEMBER 18, 2018 HEARING**

At the December 18, 2018 hearing, the court noted that included in the Motion is Applicant's raw time and billing records, which have not been organized into categories. Civil Minutes, Dckt. 240. Rather than organizing the activities that are best known to Applicant, it is left for the court, U.S. Trustee, and other parties in interest to mine the records to construct a task billing. The court declined the opportunity to provide this service to Applicant, instead leaving it to Applicant who intimately knows the work done and its billing system to correctly assemble the information.

The court also noted the Confirmed Sixth Amended Plan may not support the requested fees. The Plan in this Case requires monthly plan payments of \$4,815.00 through December 2015 and then \$7,046 through February 2018, and finally \$9,113.00 a month for the final twenty-four months of the Plan. Dckt. 203. In addition, the non-exempt portion of proceeds from personal injury litigation will be used to fund the Plan.

In these final twenty-four months Debtor will be paying the following to creditors:

Chapter 13 Trustee Fees (Est. at 8%).....	\$ 792.00
Class 1 Mortgage, Current Monthly Installment.....	\$3,412.38
Class 1 Mortgage, Arrearage.....	\$2,691.38
Cornerstone Bank.....	\$ 350.71
IRS Priority Claim.....	\$1,000.00
EDD Priority Claim.....	\$ 617.39
Post-Petition EDD Admin Expense (\$10,606.67/24 months).. (Admin. Expense Amendment, Dckt. 225)	\$ 441.95

General Unsecured Claims (0% Dividend).....	\$ 0.00
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The above requires \$9,305.81 a month in payments, which is more than the monthly plan payment. There is no money to fund the payment of additional fees, if the court orders them to be paid through the Plan, thus dooming the plan to default and dismissal.

Rather than denying the Application without prejudice, the court continued the hearing to January 15, 2019, to afford Applicant the opportunity to provide the court, U.S. Trustee, and

other parties in interest requesting the information with the necessary task billing analysis.

## **SUPPLEMENTAL DECLARATION & EXHIBIT**

On January 4, 2019, Applicant filed its Supplemental Declaration of Bonnie Baker. Dckt. 242. The Declaration provides a detailed task-billing analysis. The Declaration also confirms that all of Debtor's creditors have been paid 100% of their claims through the Chapter 13 Plan in this case.

Applicant also filed as Exhibit A an itemized billing statement. Dckt. 243.

## **JANUARY 15, 2019 HEARING**

At the January 15, 2019 hearing the court, having reviewed the itemized billing filed after the first hearing, the court noted that Applicant was seeking conversion of the set fee agreement to an hourly one. Civil Minutes, Dckt. 247.

Applicant's Supplemental Itemized Billing Statement reflects total fees of \$43,965.00. Dckt. 243. The Statement describes the following main categories of work performed: General Case Administration, Loan Modification, Motion to Approve Plan, Motion to Value Collateral, Objection to Claim of Exemption, Application to Dismiss Case, Order on Motion Application to Dismiss, Civil Suits, and Post-filing Tax Debts.

Reviewing the detailed time entries provided in the Billing Statement, it is clear Applicant is not merely billing for substantial & unanticipated fees. Rather, Applicant is billing the entirety of work performed in this case, and using the "no look fee" as a retainer. Some of the work itemized in the Billing Statement includes initial consultation, preparation of documents necessary for filing, preparation and filing of the Voluntary Petition and Schedules, filing of the first proposed plan, and other services that are part of all Chapter 13 filings. Applicant's request to convert his set fee agreement into an hourly agreement for all services is not proper.

The Statement also includes an explanation that the original request for fees of \$40,564.00 was determined by crediting the \$2,000 paid pre-filing and \$281.00 filing fee. Applicant admits that it did not credit the \$1,500.00 paid to it through the plan, and requests that the court consider unbilled fees associated with the present Motion as an offset (substantively, Applicant requests a flat fee of \$1,500 for work associated with this Motion). Applicant also no longer reduces its request by the filing fee amount.

In this case, Debtor had no confirmed plan until February 18, 2016, roughly two years after filing. *See* Order, Dckt. 215. The first confirmed plan was Debtor's Sixth Amended Plan. Despite the case having been protracted along for two years without a confirmed plan, Applicant on behalf of Debtor proposed in the Sixth Amended Plan to be compensated \$3,500.00 pursuant to Local Bankruptcy Rule 2016-1(c). Plan ¶ 2.06, Dckt. 196. The court in the Order Confirming Amended Plan approved those requested fees. Order, Dckt. 215.

It appears that the work involved in this case was significantly more demanding than average.

However, such is not an exception to, or grounds to breach, the set fee agreement. Every consumer attorney could assert this as a grounds to ignore the agreed set fees when he or she spends more time than projected. In cases when the set fee works to be a bonus (Applicant spending less time than equal to the set fee), however, Applicant does not state that the rules require him to give the extra amount back. The set fee exists to allow Applicant to elect to accept such fees, taking the bonus in some cases and spending more time in other cases, but in the end the over and under amounts should balance out.

At some point prior to confirmation Applicant should have appreciated that this was not something she was going to be compensated for on a set fee basis, not have sought fees on that basis and not have had the court issue the order she prepared which states:

**IT IS FURTHER ORDERED** that:

The attorney's fees for the debtors' attorney in the full -amount of \$3500.00 are approved, \$2000.00 of which was paid prior to the filing of the petition. The balance of \$1500.00, provided that the attorney and debtor have complied with Local Bankruptcy Rule 2016-1(c), shall be paid by the trustee from plan payments at the rate specified in the confirmed plan.

Confirmation Order, Dckt. 215.

Clearly, Applicant's significant work performed prior to confirmation of the Sixth Amended Plan could not reasonably have been "unanticipated." In proposing the Sixth Amended Plan Applicant had knowledge of all the work involved in the case thus far and nevertheless opted to be paid pursuant to Local Bankruptcy Rule 2016-1(c). Having done so and there being an order in place allowing such fees as provided under the Local Bankruptcy Rules, Applicant cannot merely receive a fee enhancement after the fact.

**Other Work Outside of the Scope of the  
Agreed Set Fee Applicant Agreed to Accept  
and Ordered by the Court**

However, Applicant may seek, consistent with Local Bankruptcy Rule 2016-1(c)(3), the payment of additional fees for "substantial and unanticipated work" outside of what is included in the agreed to set fee. Some of the categories post-confirmation work that qualify, including:

Application to Dismiss Case

Administration

Civil Suits

Post-filing Tax Debts

The burden is on Applicant to demonstrate these fees are for "substantial and unanticipated



work.”

Based on the foregoing, the court continued the continued the hearing to the March 12, 2019 to allow Applicant the opportunity to file supplemental pleadings addressing which fees sought are actually for “substantial and unanticipated work.”

### **APPLICANT’S SECOND SUPPLEMENTAL DECLARATION & BILLING STATEMENT**

On March 4, 2019, Applicant filed as Second Supplemental Exhibit “A” revised billing statements, and a Second Supplemental Declaration of Bonnie Baker.

The Baker Declaration states Applicant now only seeks fees for substantial and unanticipated work performed after confirmation of the Sixth Amended Plan on February 2, 2016. Dckt. 248. The Declaration provides a task billing analysis for the services provided, which are described in the following main categories:

**Trustee’s Application To Dismiss The Case:** services in this category included review of the Confirmed Plan, status of plan and creditor payments, preparation of a modified plan draft and opposition to dismissal, and conferencing with Debtor.

**Post-Confirmation Civil Suits:** services in this category included monitoring several of Debtor’s lawsuits filed in Shasta County courts, communicated with Debtor’s state court counsel, and work on a worker’s compensation claim for Debtor’s paralyzed son.

**Post-Confirmation Tax Debt:** services in this category included discussing with Debtor garnishment of wages, and discussing and negotiating with the Internal Revenue Service resolution of the issue.

**Post-Confirmation Administration:** services in this category included reviewing numerous notices of change of mortgage payment from creditor Wells Fargo, N.A., determination of whether a plan modification was necessary, communication with Debtor regarding the purchase of a new vehicle, negotiation with creditor Hartford Home Insurance regarding deferred maintenance of Debtor’s home, and communications with Wells Fargo, N.A. regarding adjustments to asserted late charges.

**Preparation of Fee Application:** Applicant prepared the Second Supplemental Declaration and Supplemental Billing Statement.

### **REVIEW OF SERVICES PROVIDED FOR PREPARATION OF FEE APPLICATION**

As discussed, *supra*, the hearing on this Application for fees has been continued twice, the court determining that the Application and supporting documents provided were insufficient. Supplemental Pleadings have been filed, which the court now reviews, beginning with the most recently filed documents.

In her Additional Supplemental Declaration, Applicant provides the court with the following testimony:

- A. Applicant is seeking only “specific work that was substantial and unanticipated and outside of what would be considered as part of work included in the set fee, post confirmation of the 6th Amended Plan on 2/2/2016, per Local Bankruptcy Rule 2016-l(c)(3).”
- B. The compensation for services being requested by Applicant is for the services set forth in Exhibit A filed with the Supplemental Declaration.
- C. The additional fees for the substantial and unanticipated work done by Applicant requested to be approved total \$17,567.50 (including costs).

Dckt. 248.

Going to Exhibit A, Dckt. 249, Applicant has provided the court with time records in which she provides a detailed task billing analysis. For the task billings groups the following amounts are requested:

- A. Chapter 13 Trustee’s Motion to Dismiss: Applicant seeks the allowance of \$2,260 in fees, which is for both attorney billings and paralegal billings.

In reviewing these billings, the time bill is reasonable. It includes reviewing, negotiating, and drawing up language for possible plan modifications to address the issue and keep the plan on track (which was accomplished and creditors paid 100% on their claims). The court determines that these fees are reasonable and for necessary services that are not included in the set fee in this Chapter 13 case.

- B. Post-Confirmation Civil Suites: Applicant seeks allowance of \$4,947.50 in fees, which are predominately attorney’s fees with some paralegal charges.

The services described are all in the nature of appropriate, and necessary, services to be provided by lead bankruptcy counsel in making sure that non-bankruptcy proceedings being handled by other attorneys are being done in a manner consistent with the Bankruptcy Code, the Chapter 13 Plan, and the interests of the bankruptcy and plan estates. These services spanned over a three year period (2016-2018). The court determines that these fees are reasonable and for necessary services that are not included in the set fee in this Chapter 13 case.

- C. Post-Confirmation Tax Debt: Applicant seeks allowance of \$2,692.50 in fees, which are predominately attorneys’ fees with some paralegal charges.

The services spanned a three year period (2016-2018) and relate to post-petition federal tax issues. The services provided and fees relating thereto are reasonable and for necessary services that are not included in the set fee in this Chapter 13 case.

- D. Post-Confirmation Administration: Applicant seeks allowance of \$2,405.00 in fees, which are predominately attorney's fees with some paralegal charges.

This is an area in which some counsel find the distinction between the post-confirmation services included in the set fee (such as getting the final report completed, certifications filed, and discharge entered) a bit hazy. Applicant has requested fees for services which are outside those included in the set fee (with a minor exception or two which are not of sufficient consequence to address). As with the prior additional fees, these are reasonable, both in time spent and dollar amount, and are for necessary services that are not included in the set fee in this Chapter 13 case.

- E. Fees and Costs for Preparing Fee Application: In the Additional Supplemental Declaration Applicant seeks further recovery of \$4,100 in attorney's fees and \$922.50 in paralegal fees, and \$240 in costs advanced (which are not identified) for the Application for the Additional Legal Fees and Costs.

While the court has found that Applicant's fees charged have been reasonable and for necessary services for the amounts requested for the other services, unfortunately, it is not the conclusion with respect to the fee application. Here, 16.4 hours of attorney time and an additional 12.3 hours of paralegal time is not reasonable. It appears that much of this time was spent by Applicant due to an unfamiliarity with seeking additional debtor counsel fees for substantial and unanticipated work, as well as structuring motions and supporting evidence for such fee applications in the bankruptcy court. This is not to say that the court believes counsel is manufacturing time, just that at \$250 an hour for the attorney and \$75 an hour for a paralegal, the time spent is not reasonable. Effectively, Applicant would be billing for "continuing legal education" time on the subject.

After considering the actual fees requested, the records required to be provided, the necessary pleadings, adjusting for revised pleadings that were required so as to not have double billing for generating the proper documents, and these proceedings, the court allows \$1,750.00 for the fee application (inclusive of reasonable time for attending hearings), plus \$240.00 in costs.

## **APPLICABLE LAW**

### **Statutory Basis For Professional Fees**

Pursuant to 11 U.S.C. § 330(a)(3),

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

- (A) the time spent on such services;
- (B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

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

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

### **Reasonable Fees**

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

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

E. Did the attorney exercise reasonable billing judgment?

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

### **Reasonable Billing Judgment**

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

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

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

### **Additional Fees for Substantial and Unanticipated Work**

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. 215. 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 ALLOWED**

### **Fees**

As addressed above, the court has determined that for the reasonable and necessary unanticipated legal services in this case, based solely on Applicant's hour rate for attorney and paralegal services, the fees in the base amount of \$14,055.00 are allowed.

As stated by the Ninth Circuit the lodestar computation is presumptively the allowable amount, but the court has the discretion in "rare or exceptional instances" to adjust the amount, either upwards or downwards. Here, some of these exceptional circumstances exist. The first is that Debtor's counsel has undertaken to provide the services knowing that payment would be delayed a significant amount of time, and in large part contingent on Debtor being able to perform and complete the Chapter 13 Plan. In providing those services, and delaying payment on her fees, Applicant underwrote the Plan, through an amendment, and now payment of 100% payment of all creditors' claims.

Applicant's \$250.00 a hour rate is presumably based on an anticipated timely payment monthly (whether by monthly payment or from a retainer that the client is required to maintain). If not, and there is at least a significant delay or a contingency on payment, then the face hourly rate would reasonably be higher. A rate adjustment of 20%, or \$50 an hour, is not unreasonable.

The court concludes that an enhancement to the base hourly rate for the fees, whether attorney's or paralegal's, of 20% is not unreasonable under the very unique and exceptional facts of this case.

Therefore, the court's adjusted allowance of fees for Applicant is \$16,866.00, are approved 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, and if sufficient funds do not exist in the Plan, by the Debtor directly post-closing of this bankruptcy case.

### **Costs Allowed**

The court allows Applicant costs of \$240.00.

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 Bonnie Baker (“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 Bonnie Baker is allowed the following fees and expenses as a professional of the Estate:

Bonnie Baker, Professional Employed by Mark Jon Hansen and Sarah Ann Monica Hansen (“Debtor”)

Fees in the amount of \$16,866.00

Costs in the amount of \$240.00

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 and Local Bankruptcy Rule 2016-1 for substantial and unanticipated work as counsel for Debtor in this bankruptcy case.

**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, and if sufficient funds do not exist in the Plan, by the Debtor directly post-closing of this bankruptcy case.

This bankruptcy court retains exclusive federal court jurisdiction over the above fees, payment of such fees, and the enforcement of any obligation to pay such fees by the Debtor if there are insufficient funds to pay the fees through the Chapter 13 Trustee.



**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.

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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 December 29, 2018. By the court's calculation, 46 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).

<b>The Motion to Confirm the Modified Plan is <del>XXXXXXXXXX</del>.</b>
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Harry R. Nash and Josephine Ann Nash ("Debtor") seek confirmation of the Modified Plan because of changes in circumstances, including having to evict a delinquent tenant, performing repairs at the cost of \$11,000.00, and incurring costs due to a car accident. Dckt. 86 at ¶ 2. The Modified Plan provides that \$96,008.00 has been paid as of November 2018, and Debtor will make payments of \$8,290.00 for 46 months beginning December 25, 2018. Dckt. 87. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

#### **CHAPTER 13 TRUSTEE'S OPPOSITION**

David Cusick ("the Chapter 13 Trustee") filed an Opposition on January 25, 2019. Dckt. 95. Trustee opposes the Motion on the basis that service was not provided to the following creditors:

CashCall, Inc.

Internal Revenue Service  
Portfolio Recovery Associates LLC  
Secretary of the Treasury  
Synchrony Bank  
TD Bank US, N.A.  
U.S. Bank NA dba Elan Financial Services  
United States Attorney for the Internal Revenue Service  
United States Department of Justice  
Wells Fargo Bank, N.A., dba WFDS

## **DEBTOR'S REPLY**

Debtor filed a Reply on February 3, 2019. Dckt. 98. Debtor states a Notice was filed to continue the hearing and provide notice to all parties in interest.

Debtor's Notice of Continued Hearing was filed the same day as Debtor's Reply. Dckt. 101. The Amended Proof of Service indicates service was made on the parties previously omitted. Dckt. 100.

## **NOTICE OF MODIFIED PLAN AND MOTION TO CONFIRM MODIFIED PLAN**

Debtor filed an Amended Certificate of Service on February 3, 2019. Dckt. 100. The Amended Certificate of Service provides evidence that the First Modified Plan was served on Debtor, Chapter 13 Trustee, U.S. Trustee, creditors.

## **DISCUSSION**

Debtor has now served the Modified Plan on parties in interest in this case.

At the hearing, **XXXXXXXXXX**.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by Harry R. Nash and Josephine Ann Nash ("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 hearing on the Motion to Confirm the Modified Plan is **XXXXXXXXXXXX**.

4. [18-22861](#)-E-13      **CALEB/EMILY HUMPHREY**      **OBJECTION TO CLAIM OF OCWEN**  
[LBG-1](#)      **Lucas Garcia**      **LOAN SERVICING, LLC, CLAIM**  
           **NUMBER 6**  
           **1-22-19 [37]**

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

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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, Chapter 13 Trustee, and Office of the United States Trustee on January 22, 2019. By the court's calculation, 49 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

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

**The Objection to Proof of Claim Number 6-1 of Ocwen Loan Servicing, LLC is sustained and all amounts in excess of \$14,867.23 asserted as being pre-petition defaults are disallowed.**

Caleb Christian Humphrey and Emily Suzanne Humphrey, Chapter 13 Debtors, ("Objector") request that the court disallow the claim of creditor Ocwen Loan Servicing, LLC. . The Objection makes reference to Proof of Claim No. 6-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of \$167,046.62, with prepetition arrearages of \$20,430.00.

A review of Proof of Claim No. 6-1 shows that the Creditor is identified in the Proof of Claim to be:

HSBC Bank USA, N.A., as Trustee on behalf of ACE Securities Corp. Home Equity Loan Trust and for the registered holders of ACE Securities Corp. Home Equity Loan Trust, Series 2006-ASAP6, Asset Backed Pass-Through Certificates.

Proof of Claim 6-1, Part 1 Question 1. It also includes information that HSBC Bank USA, N.A., as Trustee, also uses the name “Ocwen Loan Servicing, LLC” in doing business with the Debtor.

Objector asserts that the Claim misstates the arrearages owing based on Creditor’s own billing statements. Objector argues further the claim is not supported by the information it or the attachments provide as required by Federal Rule of Bankruptcy Procedure 3001(c).

Objector filed as supporting evidence the Declaration of Objector, which introduces evidence to authenticate Objector’s Exhibits 2 and 3. Declaration, Dckt. 39. Objector states that based on Exhibit 2 and 3, the reinstatement amount to become current is \$10,030.80. Objector argues that any figure beyond that is therefore not reasonable or supported.

Objector filed as Exhibit 2 a Notice Of Sale, and as Exhibit 3 a regular Monthly Mortgage Statement. Dckt. 40. The Notice Of Sale states “The total amount due in the notice of sale is \$167,186.86.” The Notice does not indicate a date of issuance, but states the scheduled sale date if May 9, 2018.

The detail provided on the Owen Loan Servicing, LLC Mortgage Account Statement dated April 17, 2018, provides the following detailed information:

Total Amount Due.....\$164,243.62

Reinstatement Amount as of April 17, 2018.....\$10,033.80

Which is Comprised of:

Principal.....\$3,540.08

Interest.....\$2,506.72

Escrow Payment.....\$3,987.00

Exhibit E, p. 63.

Objector argues in the Objection that the reinstatement amount plus an additional missed May 2018 payment demonstrate the arrearages should be \$13,330.80. Objector concludes the Claim should be allowed in the amount of \$167,046.62 with prepetition arrearages of \$10,030.80.

## **CREDITOR’S RESPONSE**

Notwithstanding the misidentification of the Creditor in the Motion, HSBC Bank, USA, as Trustee, has filed a response. Creditor has chosen to not present any evidence in opposition to the Objection, but relies only on the prima facie effect of a proof of claim signed by Theron Covey, of Robertson, Anschutz,, & Schnied, P.L. of Boca Raton, Florida as the authorized agent for Creditor. Proof of Claim 6-1, p. 3. <sup>FN. 1</sup>

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FN. 1. Theron Spencer Covey III is identified by the California State Bar as an attorney with the address, “RAS, 7676 Hazard Center Dr, Ste 500, San Diego, California.  
<http://members.calbar.ca.gov/fal/Licensee/Detail/246746>.

A review of what appears to be the website for Robertson, Anschutz, & Schnied, P.L. indicates that the firm is located in Florida, but has “affiliated firms” that operate in other parts of the country. <https://www.rasflaw.com/mission-services/>. It is not clear what “affiliated firms” are or that Mr. Covey is an associate, partner, or shareholder in Robertson, Anschutz & Schnied, P.L.  
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Creditor filed a Response on February 26, 2019. Dckt. 44. Creditor argues Objector failed to rebut the presumptive validity of Creditor’s Claim because Objector does not identify specific charges listed in the Claim to dispute. Creditor argues further the Monthly Statement and Claim are consistent (accounting for the missed May 2018), and provides the following illustrative table:

	April Statement	Proof of Claim	Difference
Principal and Interest Due:	\$6,046.80	\$6,651.48	\$604.68
Escrow Advances:	\$3,803.75	\$3,803.75	\$0.00
Fees/Other Charges Due:	\$5,772.91	\$8,407.03	\$2,634.12
Projected Escrow Shortage:	\$0.00	\$1,567.74	\$1,567.74
Total:	\$15,623.46	\$20,430.00	\$4,806.54

Creditor’s counsel attempts to argue, without presenting any evidence, the following in opposing the Objection:

1. The principal and interest payment increase resulted from the missed May 2018 payment. Dckt. 44 at p. 3:27-4:3.
2. The increase of fees in the amount of \$2,661.02 resulted from numerous fees associated with the preparation for foreclosure sale. *Id.* at p. 4:8-20.
3. The projected escrow shortage is the amount that should exist in the escrow account as of the petition date, less the amount actually held. *Id.* at p. 4:26-27.

Additionally, Creditor argues that pursuant to Federal Rule of Bankruptcy Procedure 3001(c), each of the fees objected to by the Objector are included in an itemized statement attached to the Proof of Claim and further supported by attached invoices.

## 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.

The court first looks to Proof of Claim No. 6-1 filed by Mr. Covey, an attorney in San Diego, California, that may be with an "affiliated firm" with Robertson, Anschutz, & Schnied, P.L. The amount stated as necessary to cure any default as of the May 8, 2018 filing of this bankruptcy case is stated in Proof of Claim No. 6-1 to be \$20,430.00. Proof of Claim No. 6-1, Part 2, Question 9.

On the Mortgage Proof of Claim Attachment to Proof of Claim No. 6-1, Part 3 (p. 4), the pre-petition arrearage is computed as follows, as compared the amounts stated on the April 17, 2018 Monthly Mortgage Statement:

	<b>Proof of Claim Amount</b>	<b>April 17, 2018 Monthly Mortgage Statement Reinstatement Amount</b>	<b>Increase/(Decrease Over Monthly Mortgage Statement Reinstatement Amount</b>
<b>Principal &amp; interest due</b>	\$6,651.48	\$6,046.80	\$604.68
<b>Pre-petition fees due</b>	\$8,407.03	\$0.00	\$8,407.03
<b>Escrow deficiency for funds advanced</b>	\$3,803.75	\$3,987.00	(\$183.25)
<b>Projected escrow shortage</b>	\$1,567.74	\$0.00	\$1,567.74
<b>Less funds on hand</b>	\$0.00	\$0.00	\$0.00
	=====		
<b>Total pre-petition arrearage</b>	\$20,430.00	\$10,033.80	\$10,396.20


The April 17, 2018 Monthly Mortgage Statement in several places, including at the top in larger, distinctive font, states:

Due Now

## Reinstatement Amount     \$10,033.80

Exhibit E, Dckt. 40 at 63. At the bottom of the April 17, 2019 Monthly Mortgage Statement is the payment coupon, which shows the amounts due and what must be paid to make the obligation current, an image of which is set forth below:

See reverse side for important information and state specific disclosures.



**Payment Coupon**

Reinstatement Amount	\$10,033.80
If late charge assessed after 05/16/18, add late charge of	\$30.23
Total Amount Due with Late Charge (if assessed)	\$10,064.03
Additional Principal	_____
Additional Escrow	_____
Late Charges and Fees	_____
Other Additional Payments	_____
<b>Total Enclosed</b>	_____

**Calvin Humphrey**  
Account Number: 0020180280

**OWEN LOAN SERVICING, LLC**  
PO BOX 060264  
DALLAS TX 75266-0264

Note: If this check is returned, any recovery claims will first be applied to outstanding payments due and then additional principal.

If this payment is assessed as a prepayment deduction, this will not be used for informational purposes only.

1 000100L4033 4444444481 0000000201L4280 50 010033803

Though repeatedly stating in the April 17, 2018 Monthly Mortgage Statement that the amount necessary to reinstate the loan is \$10,064.03, including the statement:

This account can still be reinstated (bringing the account to a current status) and avoid foreclosure. The amount required to reinstate the mortgage account as of the date of this statement is listed above.

*Id.*, under the Important News heading on the Statement, there are now asserted additional fees of \$8,407.03 and an escrow shortage of \$1,567.74 that materialized between April 17, 2018, and May 8, 2018 when the bankruptcy case was filed.

Attached to Proof of Claim No. 6-1 is a chart titled “Fees Breakdown” which lists a number of pre-April 17, 2018 items which are not included in the April 17, 2018 amount necessary to bring the account current as stated in the April 17, 2018 Monthly Mortgage Statement, and the following post-April 17, 2018 fees:

Eff Date	Invoice Date	Description	Auth Amt	Reg Pmt Bal
5/1/2018	4/27/2018	Property Inspection Fee	\$14.50	\$14.50
5/1/2018	4/16/2018	Foreclosure Cost	\$105.00	\$105.00
5/10/2018	4/19/2018	Foreclosure Cost	\$58.17	\$58.17
5/10/2018	4/19/2018	Foreclosure Fee	\$285.00	\$285.00
5/10/2018	4/19/2018	Foreclosure Cost	\$120.00	\$120.00

5/10/2018	4/19/2018	Foreclosure Cost	\$2,078.34	\$2,078.34
			Total	\$2,661.01

Proof of Claim No. 6-1, p. 8.

No evidence is presented by Creditor that there was an error in the April 17, 2018 Monthly Mortgage Statement, that the amount necessary to be paid by Debtor to bring the obligation current as of April 17, 2018 was not the \$10,064.03, or that any additional amounts owed after April 17, 2018 were more than the fees stated above, additional interest, and the principal portion of the May 2018 installment.

In looking at the Fees Breakdown attachment to Proof of Claim No. 6-1, it appears that Creditor has found it necessary to conduct monthly inspections of the Property, charging Debtor initially \$13.25 a month and then beginning in June 2017 \$14.50 a month.

As addressed above, the April 17, 2018 Mortgage Account Statement clearly, and repeatedly, notices the Debtor that the reinstatement amount necessary to bring the account current is \$10,033.80.

The court does note that the April 17, 2018 Mortgage Account Statement does have a line item for "Past Due Fee/Other Charges," but such amounts are not stated to be necessary to be paid for the account to be current. Thus, such amounts are not shown to be in default and something that has to be cured.

As also stated above, nothing has been provided to the court to show that Theorn Covey, apparently an attorney with a law firm which is "affiliated" with the Robertson, Anschutz & Schnied, P.L. Law Firm (but not a member of said law firm) had such knowledge to determine that Ocwen Loan Servicing, LLC, Creditor's loan servicer, was in error in the April 17, 2018 Mortgage Account Statement and that it was Mr. Covey who held the superior information and records. Rather, the evidence presented by Debtor from the statement issued by Creditor via its loan servicer, the parties with the actual books and records to compute the amount of any defaults and to compute the amount necessary to bring the account current outweighs significantly the numbers filled in on the proof of claim form by Mr. Covey.

Attached to Proof of Claim No. 6-1 is an Escrow Account Disclosure Statement in which the escrow arrearage of \$1,567.74 is computed. Proof of Claim No. 6-1, p. 47-48. This is computed based on the forward looking calculation of what will be necessary to pay the insurance and property taxes, the balance in the escrow account, and the shortfall as of the commencement of this case.

Therefore based on Proof of Claim No. 6-1, and affording it the prima facie evidentiary value it is entitled, the evidence presented by Debtor, the admission by Creditor that as of April 17, 2018 the amount necessary to cure the defaults on the obligation and to bring it current was \$10,033.80, Debtor not having offered any counter evidence in the attachment to Proof of Claim No. 6-1 that there was foreclosure expenses incurred in the amount of \$2,661.01 after the April 14, 2018 Monthly Mortgage Statement, the court determines that the pre-petition default to be cured through the Chapter 13 Plan, and upon payment renders the obligation current (assuming no post-petition defaults) is:

Pre-Petition Principal and Interest	\$6,046.80	(April 17, 2018 Mortgage Account Statement Amount)
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Pre-Petition Principal and Interest	\$604.68	(Additional Amount for May 2018 Stated by Creditor in Opposition)
Escrow Payment	\$3,987.00	(April 17, 2018 Mortgage Account Statement Amount)
Escrow Arrearage	\$1,567.74	(Computed in Attachment to Proof of Claim No. 6-1)
Post-April 17, 2018 Expenses	\$2,661.01	(Amounts stated in Attachment to Proof of Claim 6-1)
	=====	
	\$14,867.23	

All amounts of the asserted pre-petition defaults in excess of \$14,867.23 are disallowed.

At the hearing, **XXXXXXXXXXXXXXXXXXXXXXXXXXXX**

Based on the evidence before the court, the Objection to the Proof of Claim is **XXXXXX**.

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

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

The Objection to Claim of HCBC Bank USA, N.A. ("Creditor"), filed in this case by Caleb Christian Humphrey and Emily Suzanne Humphrey, 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 6-1 of HCBC Bank USA, N.A. is sustained and all amounts in excess of \$14,867.23 asserted to be pre-petition defaults, arrearages, or obligations by Debtor to be paid for the obligation upon which Proof of Claim No. 6-1 is based to be current are disallowed in their entirety.

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

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Local Rule 3007-1 Objection to Claim—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 November 13, 2018. 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).

<p><b>The Motion to Confirm the Modified Plan is <span style="color: red;">XXXXXXXXXXXXXXXXXX</span>.</b></p>
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Caleb Christian Humphrey and Emily Suzanne Humphrey ("Debtor") seek confirmation of the Modified Plan, adjusting payments to account for unexpected expenses, including a complete breakdown of one of Debtor's vehicles. Dckt. 26. The Modified Plan provides for payments of \$1,350 for 2 months, \$0 for 3 months, and 1,450 for the remaining 55 months of the plan term. Dckt. 30. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

#### CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on December 3, 2018. Dckt. 33. Trustee opposes the Motion on the basis that the plan would take 96 months to complete because the additional provisions of the plan provide for \$13,600 (Dckt. 30 at p. 7) for pre-petition arrears to Ocwen Loan Servicing, LLC ("Creditor") where the scheduled claim actually only asserts arrears of \$10,380.00. Dckt. 30 at p. 3.

#### DECEMBER 18, 2018 HEARING

At the December 18, 2018 hearing the court continued the hearing on the Motion to February 12, 2019 at 3:00p.m. Dckt. 36.

## FEBRUARY 12, 2019 HEARING

By the February 12, 2019 hearing, no party to this Contested Matter had filed further pleadings.

However, a review of the docket shows Debtor filed an Objection to claim of Creditor on January 22, 2019. Dckt. 37. That Objection has the same Docket Control Number “LBG-1” associated with the present Motion<sup>FN.1</sup>. Debtor disputes Proof of Claim, No. 6 on the basis it overstates arrears to be \$20,430.00 where only \$13,330.80 is necessary to cure.

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FN.1. Movant is reminded that the Local Bankruptcy Rules require the use of a new Docket Control Number with each motion. LOCAL BANKR. R. 9014-1(c). Here, Debtor used the same DCN for both the present Motion and the Objection To Claim. That is not correct. Counsel is reminded that not complying with the Local Bankruptcy Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(c)(l).  
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## DISCUSSION

Creditor filed Proof of Claim No. 6-1 on July 16, 2018, asserting greater arrears than what are provided for in the plan. Based on the Objection to Proof of Claim No. 6-1, the court has determined the pre-petition default/arrearage/amount to cure so that the obligation is current to be \$14,867.23.

At the hearing xxxxxxxxxxxxxxxxxxxxxxxxx

Based on the foregoing, the plan is not feasible and the Motion is xxxxx.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by Caleb Christian Humphrey and Emily Suzanne Humphrey (“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 hearing on the Motion is xxxxxx.

## FINAL RULINGS

6. [18-23912-E-13](#) CHARENA GLASPER-NORRIS MOTION TO MODIFY PLAN  
[BLG-1](#) Chad Johnson 2-4-19 [\[22\]](#)

**Final Ruling:** No appearance at the March 12, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 12, 2019. 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 Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion to Confirm the Modified Plan is granted.**

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Charena M. Glasper-Norris ("Debtor") has filed evidence in support of confirmation.

The Chapter 13 Trustee, David Cusick ("Trustee") filed a Response on February 22, 2019. Dckt. 35. Trustee notes the Modified Plan currently provides for two payments of \$801.00 in January 2019 due to an error. Trustee states he does not oppose confirmation of the Modified Plan if the error is addressed.

Debtor file a Reply on March 1, 2019. Dckt. 40. Debtor agrees with Trustee's argument and suggests adding the following language in the order confirming plan to address the issue:

A total of \$3,905.00 has been paid into Debtor's plan through month 7 (January 2019);  
Debtor's plan payment shall be \$801.00 per month for months 8-60.

*Id.*

With the proposed language addressing the duplicative proposed payments, and Trustee having indicated non-opposition, the Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by Charena M. Glasper-Norris (“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 February 4, 2019, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, including language clarifying plan payments, transmit the proposed order to David Cusick (“the Chapter 13 Trustee”) for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

**Final Ruling:** No appearance at the March 12, 2019, hearing is required.

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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 (*Pro Se*), Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 4, 2019. By the court's calculation, 36 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 Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The hearing on the Motion to Confirm the Plan is removed from the calendar and the Motion dismissed without prejudice, the court having confirmed the Plan pursuant to the prior motion of the Debtor. Order, Dckt. 140.**

Robert S. MacBride, the debtor in *pro se* ("Debtor"), filed a Fourth Amended Plan and Motion to Confirm that plan on January 15, 2019. Dckt. 128. On February 6, 2019, the court issued an Order Confirming the Amended Plan. Order, Dckt. 140.

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

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

The Motion to Confirm the Chapter 13 Plan filed by Robert MacBride ("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 dismissed without prejudice as moot, and the Amended Plan filed January 15, 2019, is Confirmed by prior Order of the court.

**Final Ruling:** No appearance at the March 12, 2019, hearing is required.

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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 Office of the United States Trustee on January 31, 2019. By the court’s calculation, 40 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

**The Motion to Confirm the Plan is granted.**

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Everardo Perez (“Debtor”) has provided evidence in support of confirmation. David Cusick (“the Chapter 13 Trustee”) filed a Response indicating non-opposition February 20, 2019. Dckt. 45. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by Everardo Perez (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and Debtor’s Amended Chapter 13 Plan filed on January 31, 2019, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David

Cusick (“the Chapter 13 Trustee”) for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

9. [19-20751](#)-E-13 SUANNE BLEDSOE MOTION TO VALUE COLLATERAL OF  
[MRL-1](#) Mikalah Liviakis FIRST INVESTORS FINANCIAL  
SERVICES, INC.  
2-11-19 [\[10\]](#)

**Final Ruling:** No appearance at the March 12, 2019 hearing is required.

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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 Creditor, Chapter13 Trustee, and Office of the United States Trustee on February 11, 2019. 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 First Investors Financial Services (“Creditor”) is granted, and Creditor’s secured claim is determined to have a value of \$7,000.00.**

The Motion filed by Suanne Bledsoe (“Debtor”) to value the secured claim of First Investors Financial Services, Inc. (“Creditor”) is accompanied by Debtor’s declaration. Debtor is the owner of a 2013 Nissan Altima (“Vehicle”). Debtor seeks to value the Vehicle at a replacement value of \$7,000.00 as of the petition filing date. Schedule A/B, Dckt. 1; Declaration, Dckt. 12. As the owner, Debtor’s opinion of value is evidence of the asset’s value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle’s title secures a purchase-money loan incurred on January 2016, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$12,480.96. Proof of Claim 4-1. 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 \$7,000.00 the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012



and 11 U.S.C. § 506(a) is granted.

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

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

The Motion to Value Collateral and Secured Claim filed by Suanne Bledsoe (“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 First Investors Financial Services, Inc. (“Creditor”) secured by an asset described as a 2013 Nissan Altima (“Vehicle”) is determined to be a secured claim in the amount of \$7,000.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$7,000.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

10. 18-23401-E-13      PAUL/SHERI D'ANGELO CONTINUED MOTION TO CONFIRM  
MWB-4      Mark Briden      THIRD AMENDED PLAN  
1-22-19 [87]

## DEBTOR DISMISSED:

**02/19/2019**

## JOINT DEBTOR DISMISSED:

**02/19/2019**

**Final Ruling:** No appearance at the March 12, 2019 hearing is required.

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

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

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

The Motion to Confirm Third Amended Plan having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the motion is dismissed as moot, the case having been dismissed, and the plan is not confirmed.

11. [18-23401](#)-E-13      PAUL/SHERI D'ANGELO CONTINUED MOTION TO CONFIRM  
[MWB-4](#)                      Mark Briden                      THIRD AMENDED PLAN  
1-10-19 [\[70\]](#)

**DEBTOR DISMISSED:**

**02/19/2019**

**JOINT DEBTOR DISMISSED:**

**02/19/2019**

**Final Ruling:** No appearance at the March 12, 2019 hearing is required.  
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The case having previously been dismissed, the Motion is dismissed as moot.

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

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

The Motion to Confirm Third Amended Plan having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the motion is dismissed as moot, the case having been dismissed, and the plan is not confirmed.

**Final Ruling:** No appearance at the March 12, 2019 hearing is required.

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

Sufficient Notice Not 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 31, 2019. By the court's calculation, 40 days' notice was provided. 42 days' notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1).

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

**The Motion to Confirm the Amended Plan is dismissed as moot, the court having previously sustained Objections to Confirmation.**

David J. Rynda ("Debtor") filed a Fourth Amended Plan on January 27, 2019. Amended Plan, Dckt. 50. Before the Motion to Confirm was filed, creditor David Hicks filed an Objection To Confirmation, set for hearing March 5, 2019. Dckt. 52. Another Objection To Confirmation was filed by creditor Ocwen Loan Servicing, LLC, also set for the same hearing day. Dckt. 74. At the March 5, 2019 hearing, the court sustained both Objections. Civil Minutes, Dckts. 158, 169.

The Motion to Confirm the Amended Plan is dismissed as moot, the court having previously denied confirmation of the proposed plan.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by David J. Rynda ("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 dismissed without prejudice as moot, the court having previously denied confirmation of the proposed Fourth Amended Chapter 13 Plan (Order, Dckt. 170).

