UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

March 15, 2022 at 2:00 p.m.

1.	**19-21467-E-13** **PSB-2** **1 thru 2**	**LORI/JOSHUA WHITE** **Paul Bains**	**MOTION TO SELL** **2-4-22 [46]**

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 February 4, 2022. By the court's calculation, 39 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion to Sell Property is granted.

The Bankruptcy Code permits Lori Susan White and Joshua Michael White, Chapter 13 Debtor, ("Movant") to sell property under the confirmed plan after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the real property commonly known as 2677 Red Clover Way, Lincoln, California 95648 ("Property").

The proposed purchaser of the Property is Tyler Carrozzo, and the terms of the sale are:

A. Purchase Price: $505,000.00.

B. Close of Escrow: 30 days after Acceptance.

C. Initial Deposit: $10,000.00 (2% of purchase price); Loan Amount: 487,325.00 (96.5% of purchase price).

D. Investigation of Property: 7 days after Acceptance.

E. Natural Hazard Zone Disclosure Report and Owner's title insurance policy is paid by the Seller. Escrow Fees are paid 50/50 by Buyer and Seller.

F. Buyer to buy house as is. No repairs requested.

G. Real Estate commission fee is split between listing agent, Reality One Group Complete, and selling agent, EXP Reality of California, Inc. Listing agent will receive 2.5% commission which amounts to $12,625.00 and selling agent will receive the same rate and amount.

TRUSTEE'S NON-OPPOSITION

On March 1, 2022, David Cusick, Chapter 13 Trustee, filed a Non-Opposition to Debtor's Motion to Sell. Dckt. 58. Trustee requests the court to GRANT this motion as long as the Order states that proceeds are to be disbursed directly to the Trustee in the amount to pay all creditors in full pursuant to the Trustee's demand based on Debtor's confirmed plan.

DISCUSSION

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because Debtor's confirmed Chapter 13 Plan proposes to pay 0.00% of general unsecured claims and the sale of the property will allow Debtor to fund their plan at 100% of the claims.

Movant has estimated that a five percent broker's commission from the sale of the Property will equal approximately $25,250.00. 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 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 Sell Property filed by Lori Susan White and Joshua Michael White, 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 Lori Susan White and Joshua Michael White, Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Tyler Carrozzo or nominee ("Buyer"), the Property commonly known as 2677 Red Clover Way, Lincoln, California 95648 ("Property"), on the following terms:

A. The Property shall be sold to Buyer for $505,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 49, 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. The Chapter 13 Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.

D. The Chapter 13 Trustee is authorized to pay a real estate broker's commission in an amount not more than five percent of the actual purchase price upon consummation of the sale. The five percent commission shall be paid to Chapter 13 Debtor's broker, Reality One Group Complete, and Tyler Carrazzo's broker, EXP Reality of California, Inc.

E. 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.

2. **19-21467-E-13 PSB-3** | **LORI/JOSHUA WHITE** **Paul Bains** | **MOTION FOR COMPENSATION FOR PAULDEEP BAINS, DEBTORS ATTORNEY(S)** **2-7-22 [51]**

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

Local Rule 9014-1(f)(1) Motion—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 7, 2022. 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.

Pauldeep Bains, the Attorney ("Applicant") for Lori Susan White and Joshua Michael White, the Chapter 13 Debtor ("Client"), makes a Request for the Additional Allowance of Fees and Expenses in this case.

Fees are requested for the period November 19, 2021, through March 15, 2022. Applicant requests fees in the amount of $3,302.75.

TRUSTEE'S RESPONSE

On March 1, 2022, David Cusick, Chapter 13 Trustee, filed a Response to Debtor's Motion for Compensation. Dckt. 56. Trustee does not oppose the motion. However, Trustee notes that the

hours and fees total $325.00 listed for anticipated services, Dckt. 52; page 4, lines 27-28, cannot be determined as reasonable because the charges are for services not completed nor can be proven. Therefore, the Trustee requests the court to GRANT this motion for the amount of $2,977.75 ($3,302.75 - $325.00).

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 communications, preparing and filing substantive motions. The Estate has $500.00 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

"No-Look" Fees

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

> (a) Compensation. Compensation paid to attorneys for the representation of chapter 13 debtors shall be determined according to Subpart (c) of this Local Bankruptcy Rule, unless a party-in-interest objects or the attorney opts out of Subpart (c). The failure of an attorney to file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys, shall signify that the attorney has opted out of Subpart (c). When there is an objection or when an attorney opts out, compensation shall be determined in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and any other applicable authority."
> . . .
> (c) Fixed Fees Approved in Connection with Plan Confirmation. The Court will, as part of the chapter 13 plan confirmation process, approve fees of attorneys representing chapter 13 debtors provided they comply with the requirements to this Subpart.
>
> (1) The maximum fee that may be charged is $4,000.00 in nonbusiness cases, and $6,000.00 in business cases.
>
> (2) The attorney for the chapter 13 debtor must file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys.
>
> (3) If the fee under this Subpart is not sufficient to fully and fairly compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees. The fee permitted under this Subpart, however, is not a retainer that, once exhausted, automatically justifies a motion for additional fees. Generally, this fee will fairly compensate the debtor's attorney for all preconfirmation services and most postconfirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims filed. Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation. Form EDC 3-095, Application and Declaration RE: Additional Fees and Expenses in Chapter 13 Cases, may be used when seeking additional fees. The necessity for a hearing on the application shall be governed by Fed. R. Bankr. P. 2002(a)(6).

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed $4,000.00 in attorneys' fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 20. 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.

Case Administration: Applicant spent 6.8 hours and Paralegal spent 4.15 hours in this category. Applicant put forth communications, prepared and filed substantive motions.

Motion for Compensation: Applicant spent 2.0 hours in this category. Applicant prepared the 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
Pauldeep Bains, Attorney	8.8	$325.00	$2,860.00
Tina Perez, Paralegal	4.15	$185.00	$767.75
Attorney is discounting 1.0 hour			$325.00
Total Fees for Period of Application			$3,302.75

Request includes authorization to release the $500.00 from the Trust Account and receive the remaining $2,802.75 through Debtor's Chapter 13 Plan from Trustee.

FEES AND COSTS & EXPENSES ALLOWED

Fees

The unique facts surrounding the case, including communications, preparing and filing substantive motions, 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 $3,302.75 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.

The court acknowledges and appreciates the Trustee expressly identifying that $325.00 of the requested fees in connection with the pending Motion to Approve Sale. This is consistent with the court's practice of carefully reviewing motion, applications, and evidence to make a knowing and deliberate ruling, and not merely a rubber stamp "if you ask for it you get it, hang what the law really says."

In this situation, the additional $325.00 for projected fees in concluding the Motion to Sell is a reasonable and cost effective method for addressing clearly known additional legal fees. Counsel for Debtor will have to attend the Motion to Sell, and in doing so, as well as preparing for and addressing post-hearing matters, $325.00 in fees is reasonable as a "fixed fee" for those services."

The court allows Applicant the Additional Fees of $3,302.75.

The court authorizes the Chapter 13 Trustee to pay Applicant the $500.00 from the Trust Account and under the confirmed plan to pay the remaining $2,477.75.

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

Fees $3,302.75 of which $500.00 will be paid from the monies

in Applicant's Trust Account, and
$2,802.75 by the Trustee through the Confirmed Plan

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 Pauldeep Bains ("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 Pauldeep Bains is allowed the following fees and expenses as a professional of the Estate:
>
> Pauldeep Bains, Professional Employed by Lori Susan White
> and Joshua Michael White ("Debtor")
>
> Fees in the amount of $500.00 from the Trust Account
> and $2,477.75 under the confirmed Plan,
>
> 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.

3.	**20-25295-E-13** **CYB-2**	**MARC WILKIE** **Candace Brooks**	**MOTION TO INCUR DEBT** **2-24-22 [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.

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 24, 2022. By the court's calculation, 19 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 xxxxxxxxxxxx.

Marc A. Wilkie ("Debtor") seeks permission to purchase a 2021 Chrysler Jeep Renegade or similar vehicle ("Vehicle"), with a total purchase price that shall not exceed $27,322.98 and monthly payments that shall not exceed $567.68 to NewRoadsAutoLoans over a maximum loan term of 78 months with a 9.30% fixed interest rate. Debtor has listed numerous reasons as to why he seeks to purchase a newer vehicle, due to long commutes and costly repairs.

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).

Delinquency

The Chapter 13 Trustee, David P. Cusick ("Trustee") asserts that Debtor is $1,247.00 in Plan payments, which represents one month of delinquency. Accordingly, Trustee opposes Debtor incurring debt to purchase Vehicle when Debtor is already delinquent and may not afford the Plan payments. Response, Dckt. 39 at 2:14-16.

Debtor's Response to Trustee's Response states that Debtor cured his delinquency in making a $1,247.00 payment which had been pending in the Trustee's system from TSF at the time Trustee filed their Response. Debtor included a printout from TSF to support this statement. See Exhibit A, Dckt. 43. Exhibit A indicates that the Plan payment "arrived" at Trustee on March 3, 2022, although Trustee did not file a status report to reflect this. *Id.*

Failure to Afford Plan & Car Payments

Trustee additionally asserts that Debtor may not have sufficient net income to make both Plan payments and the proposed Vehicle payments. Dckt. 39 at 2:19-21. Trustee references Debtor's most recent Schedule I and J filed on February 24, 2022 (Dckt. 38) which indicates that Debtor's monthly income decreased from $5,268.16 (as listed on Debtor's original Schedule I, see Dckt. 1 at 30) to $4,602.00 as a result of Debtor's change in employment. Dckt. 39 at 2:16-18. Trustee additionally notes that Debtor did not file a Schedule I Attachment reflecting Debtor's gross income and expenses. *Id.* at 2:18-19. Based on only the information Debtor has provided and without a clear picture of Debtor's financial reality, Trustee believes that Debtor cannot afford two car payments (payments for Debtor's 2018 Jeep Wrangler and payments for Debtor's new Vehicle) as well as the Plan payments. *Id.* at 2:19-21.

Debtor's Response to Trustee's Response states that Debtor has filed the required Supplemental Schedules I and J, as well as the Business Income and Expense Attachment. Dckt. 42 at ¶ 7. Debtor states that he did not list his gross income on his Supplemental Schedule I because the Official Form 106 I(8a) provides that Debtor lists his net income from business operations. *Id*. Debtor has listed the required information pursuant to the Official Form 106 I (8a) as evidenced in Exhibit B. See Dckt. 43 at 3-7.

Debtor further clarifies that Debtor is not proposing to pay for two car payments; rather, Debtor is proposing to surrender his current vehicle (2018 Jeep Wrangler). Dckt. 42 at ¶ 8. Thus, it appears that Trustee's concerns in this area are not at issue.

Debtor's Reliance on Motion to Modify Confirmed Plan

Trustee states that Debtor is unlikely capable of affording two car payments and Plan payments under Debtor's Confirmed Chapter 13 Plan, and therefore Debtor may have to file a Modified Plan to ensure that Debtor can cure his delinquency and make all future payments. *Id.* at 2:21-23.

Debtor's Response to Trustee's Response opposes Trustee's contention that Debtor may have to file a Modified Plan to afford the proposed debt: "Debtor believes that he has demonstrated his ability to make the required vehicle payment as stated in his declaration and supplemental Schedules "I", "J" and attached Business and Income Schedule." Dckt. 42 at ¶ 10. Debtor additionally asserts that if the present Motion to Incur Debt is not granted, then filing a Motion to Modify would be moot. *Id.* at ¶ 9.

While Debtor does not make an explicit request, it would appear that Debtor wishes to hold off on filing a Motion to Modify until after the court grants Debtor's Motion to Incur Debt so that Debtor does not spend unnecessary time on matters that will ultimately be deemed moot.

At the hearing, xxxxxx.

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 Marc A. Wilkie ("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 xxxxxxxxxxxxx

4.	**21-23102-E-13 DPC-1**	**AUSTIN JAMES MERRITT David Foyil**	**OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE DAVID P. CUSICK 2-8-22 [55]**

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 Counsel on February 8, 2022. By the court's calculation, 35 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. The Plan lists three secured debts (Firefighters First Credit Union for a 2018 Keystone, VW Credit for a 2019 Volkswagen, and Firefighters First Credit Union for a 2004 Ford); however, Firefighters First Credit Union and VW Credit have not filed claims.

B. A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Firefighters First Credit Union for a 2004 Ford; however, no motion has been filed to date.

C. Debtor's first plan payment of $7,600.00 is due on February 25, 2022, prior to the hearing on this matter.

DISCUSSION

Trustee's objections are well-taken.

Failure to Afford Plan Payment / 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). The Plan lists three secured debts (Firefighters First Credit Union for a 2018 Keystone, VW Credit for a 2019 Volkswagen, and Firefighters First Credit Union for a 2004 Ford); however, as of the date of this objection, Firefighters First Credit Union and VW Credit have not filed claims. On March 7, 2022, VW Credit, Inc. Filed a proof of claim for the 2019 Volkswagen. Proof of Claim 13-1. Additionally, Firefighters First Credit Union filed a Proof of Claim on February 26, 2022. Proof of Claim 10-1.

Pursuant to Section 3.01 of the Plan, a claim will not be paid pursuant to the plan unless a proof of claim is filed on or behalf of a creditor, including a secured creditor. Here, Trustee's objection is resolved.

Debtor's Reliance on Motion to Value Secured Claim

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Firefighters First Credit Union with respect to a 2004 Ford. Debtor has failed to file a Motion to Value the Secured Claim of Firefighters First Credit Union, however. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

Plan Payment Due Before Hearing

The trustee indicates that the first payment is due February 25, 2022. The trustee has not yet filed a status report indicating whether the payment has been made. This is not grounds for denial of plan 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 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 AUSTIN JAMES PAUL MERRITT's ("Debtor") Chapter 13 Plan filed on December 21, 2021, 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.

5.	**20-21707-E-13** **PGM-2**	**MARIO BUENO** **Peter Macaluso**	**MOTION TO REFINANCE** **2-14-22 [36]**

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, and Office of the United States Trustee on February 14, 2022. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

The Motion to Refinance 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 Refinance is granted.

Mario G. Bueno ("Debtor") seeks permission for his non-filing spouse, Medelyn Ann Bueno, to refinance the real property commonly known as 2961 Mahaska Way, Sacramento, California, in her name only with a total loan amount of $317,000.00 and new monthly payments of $1,393.22 to United Wholesale Mortgage over 360 months with a 3.328% fixed interest rate. Debtor further represents that his non-filing spouse, Medelyn Ann Bueno, will gift to him the amount of $37,581.10 to pay off the plan. Wilmington Trust, NA currently holds a deed of trust on the property.

A motion to refinance 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).

Trustee's Response to Debtor's Motion

Trustee objects to the granting of the Motion absent a declaration from Debtor's non-filing spouse, Medelyn Ann Bueno, attesting to the facts of the motion and her intent to gift the Debtor the proceeds of the refinance to pay off his plan. Dckt. 41. The trustee further requests that any order state that the proceeds are to be disbursed directly from escrow to the Trustee in an amount to pay all creditors in full pursuant to Debtor's confirmed plan.

Spouse's Declaration

On March 7, 2022, Debtor's Spouse, Medelyn Bueno, filed a Declaration stating that, under penalty of perjury, United Wholesale Mortgage has agreed to refinance the loan and will be paid and authorized by Ms. Bueno. Dckt. 46. Ms. Bueno plans to pay off the bankruptcy and end the plan.

Ms. Bueno's declaration appears to resolve Trustee's concerns.

Creditor's Conditional Nonopposition

On March 9, 2022, Secured Creditor, Wilmington Trust, NA, filed a Conditional Limited Nonopposition. Dckt. 48. Creditor states they do not oppose Debtor's Motion to Refinance so long as they are paid in full through escrow and through the Chapter 13 Trustee. Creditor attached an estimated payoff as Exhibit "B".

At the hearing, Debtor and Trustee confirmed XXXXXXXXXX

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. Ms. Bueno resolving Trustee's concerns 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 Refinance filed by Mario Guadalupe Bueno ("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 Mario Guadalupe Bueno is authorized to incur debt pursuant to the terms of the agreement, Exhibit A, Dckt. 39**.**

6. **22-20007-E-13 EAT-2** **WANDA MOORE** **Peter Macaluso** **OBJECTION TO CONFIRMATION OF PLAN BY CREDITOR WILMINGTON TRUST, NATIONAL ASSOCIATION 2-10-22 [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, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on February 10, 2022. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is xxxxxxxxxxxxx.

Wilmington Trust, National Association, not in its individual capacity, but solely as trustee for MFRA Trust 2016-1 ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

A. The Plan does not pay Secured Creditor's claim on Debtor's residence in full.

B. The Plan is not feasible as Debtor has had six (6) bankruptcy cases involving the Property and has nearly continuously been in a Chapter 13 bankruptcy case since 2013.

Debtor's Response

Debtor filed a reply on March 7, 2022. Dckt. 47. Debtor states corrects should be made in the order increasing the Class 1 Payments by $10.45 to $1,263.26 and arrears payments by $50.00 to $480.00. "Debtor prays for a Confirmation order that reflects an increase in plan payment to $3,367.00, from $3,300.00, or a 2% increase."

DISCUSSION

Creditor's objections are well-taken.

Modification of an Obligation Secured Only by Principal Residence

This Objection is not a modification objection, but that the Plan is under-funded. Creditor has filed its claim which controls as to the amount of claim and arrearage (Plan, ¶ 3.02). As has clearly been identified, this is the issue.

Debtor's changes to increase plan payments appears to resolve Creditor's concerns. At the hearing, XXXXXXXXXX

Failure to Afford Plan Payment / 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). Debtor has had six (6) bankruptcy cases involving the Property and has nearly continuously been in a Chapter 13 bankruptcy case since 2013. Moreover, Debtor has a long history of being unable to maintain her mortgage payments, dating back to at least 2009, and the loan is in arrears dating back to 2012.

Creditor requests that the court limit Debtor to a 36 month plan due to the multiple prior filed and failed cases. The court notes that Debtor has had the same experienced bankruptcy counsel representing her since 2009 in filing Chapter 13 cases that failed and were dismissed. While counsel has assisted Debtor "living in the comfort of bankruptcy" these past thirteen (13) years, he has not been able to assist her in fulfilling her obligations as a debtor under the Bankruptcy Laws enacted by Congress and signed into law by the President of the United States.

At the hearing, **xxxxxxx**

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 Wilmington Trust, National Association, not in its individual capacity, but solely as trustee for MFRA Trust 2016-1 ("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 xxxxxxxxxxxx

7.	**19-21013-E-13** **TLA-1**	**MELISSA LOVATO** **Thomas Amberg**	**MOTION TO APPROVE LOAN MODIFICATION** **2-11-22 [54]**

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 Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on February 11, 2022. By the court's calculation, 33 days' notice was provided. 14 days' notice is required.

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

The Motion to Approve Loan Modification filed by Melissa Lovato ("Debtor") seeks court approval for Debtor to incur post-petition credit. Specialized Loan Servicing, LLC ("Creditor"), whose claim the Plan provides for in Class 4, has agreed to a loan modification that will reduce Debtor's mortgage payment from the current approximately $2,651.65 per month to $2,470.99 per month. The modification will provide for a 4.25% fixed interest rate and will bring the Debtor current on their payments.

The Motion is supported by the Declaration of Melissa Lovato. Dckt. 56. 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 Opposition to Motion

Trustee notes that a supplemental Schedule I and J have not been filed to support the Motion and thus they are unable to ascertain whether the Debtor's income or other assets have changed and whether or not this payment will affect their ability to make the plan payments. Dckt. 61.

In light of this resulting in a reduction in payments, which on the face of the financial information on record would result in Debtor having an additional $180.00 in monthly projected disposable income to fund a modified plan, the court does not deny the motion on those grounds.

Ruling

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 Melissa Lovato ("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 Melissa Lovato to amend the terms of the loan with Specialized Loan Servicing, LLC ("Creditor"), which is secured by the real property commonly known as 2955 Stable Drive, West Sacramento, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion (Dckt. 57).

8. **21-24215-E-13 DPC-1** **8 thru 9**

ARSENIO/LEONORA BUCAD
Timothy Walsh

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
2-9-22 [19]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on February 9, 2022. By the court's calculation, 35 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. The Trustee cannot assess the feasibility of the Plan and the Plan may not comply with 11 U.S.C. § 1325(a)(1) or (6) for the following reasons:

1. The Debtor is delinquent in Plan payments.

2. Schedule I is inaccurate as the Debtor testified at the Meeting of Creditors that he no longer worked at his second job. The Trustee requested that the Debtor amend their Schedule I so that the income was accurately disclosed; however, no

amendment has been filed.

3. The Plan is overextended as the Plan will complete in 73 months as opposed to the 60 months proposed. This exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d).

4. The Trustee is unable to fully assess the feasibility of the Plan or effectively administer the Plan as the terms for payment of the Debtor's attorney's fees are unclear.

DISCUSSION

Trustee's objections are well-taken.

Failure to Afford Plan Payment / 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) for the following reasons:

Delinquency

Debtor is $364.67 delinquent in plan payments, which represents less than one month of the $3,750.00 Plan payment. Before the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Schedule I is Inaccurate

Schedule I is inaccurate as the Debtor testified at the Meeting of Creditors that he no longer worked at his second job. The Trustee requested that the Debtor amend their Schedule I so that the income was accurately disclosed; however, no amendment has been filed.

Overextended

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to Trustee, the Plan will complete in 73 months due to the arrears claim of Carrington being filed for amount higher than was scheduled. The Debtor schedule the pre-petition arrears claim in the amount of $10,915.48; however, the Proof of Claim of Carrington's states that the Debtor owes $22,946.27 in pre-petition arrears. Claim No. 2. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Attorney's Fees Unclear

Debtor failed to specify whether counsel shall seek approval of fees either by complying with Local Bankruptcy Rule 2016-1(c) or by filing and serving a motion in accordance with 11 U.S.C. §§ 329

and 330. Fed. R. Bankr. P. 2002, 2016 and 2017.

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

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

The court shall issue 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.

9. **21-24215-E-13 EAT-1** | **ARSENIO/LEONORA BUCAD** **Timothy Walsh** | **OBJECTION TO CONFIRMATION OF PLAN BY HSBC BANK USA, NATIONAL ASSOCIATION** **1-26-22 [13]**

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 26, 2022. By the court's calculation, 49 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is overruled.

The Chapter 13 Trustee, HSBC Bank USA, National Association, as Trustee for Carrington Mortgage Loan Trust, Series 2007-HE 1 Asset-Backed Pass-through Certificates ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

A. The Plan reflects that $10,915.48 in pre-petition arrears will be paid through the Plan with an ongoing mortgage payment of $2,582.23; however, the ongoing mortgage payment is $2,932.68. In addition, to cure the estimated pre-petition arrears in full over sixty (60) months, the Debtor would need to provide a dividend of $382.42 (not $181.92 as provided in the Plan).

B. The Plan is not feasible.

C. The Debtor has filed multiple Chapter 13 bankruptcy cases that the Debtor has not been able to complete.

DISCUSSION

Modification of an Obligation Secured Only by Principal Residence

Debtor's Plan was not filed in good faith and is an improper modification of a claim secured only by a security interest in real property that is Debtor's principal residence. Creditor has filed a Proof of Claim indicating a secured claim in the amount of $498,161.79, secured by a first deed of trust against the property commonly known as 2 Fleet Court, Vallejo, California. Debtor's Schedules indicate that this is Debtor's primary residence.

The Plan does not control the amount of Creditor's Claim, but the Proof of Claim does, so there cannot be a "modification" of the debt merely by Debtor putting a lesser amount in the Plan. See Plan ¶ 3.02; Dckt. 3.

Failure to Afford Plan Payment / 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). Secured Creditor does not provide a reason for this assertion. Therefore, the court cannot sustain Creditor's objection based on this concern.

Previous Chapter 13

Debtor filed several previous Chapter 13 petitions on February 18, 1998, April 2, 2010, January 14, 2014, and September 6, 2017, which cases were dismissed on May 19, 2003, October 8, 2013, July 3, 2015, and September 16, 2021. Debtor's recent bankruptcy case has implications for the duration of the automatic stay, *see* 11 U.S.C. § 362(c)(3), but is not by itself reason to deny confirmation.

The Objection is overruled.

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 HSBC Bank USA, National Association, as Trustee for Carrington Mortgage Loan Trust, Series 2007-HE 1 Asset-Backed Pass-through ("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 overruled.

10. 17-23018-E-13 TLA-5 JEFFREY/RHIANNON CLEMENT Thomas Amberg

MOTION TO MODIFY PLAN 1-21-22 [105]

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 21, 2022. By the court's calculation, 54 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.

The debtor, Jeffrey Clement and Rhiannon Clement ("Debtor") seeks confirmation of the Modified Plan because they experienced a direct, material hardship as a result of being afflicted with COVID-19 which caused significant gaps in income. Declaration, Dckt. 107. The Modified Plan provides creditors to be paid a total of $54,444.00 from June 2017 through and including January 2022. For the remainder of the Plan, Debtor will pay $1,086.00 per month (February 2022-September 2022). Modified Plan, Dckt. 109. This would be a 68-month Plan. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on February 14, 2022. Dckt. 114. Trustee opposes confirmation of the Plan on the basis that:

A. The modification proposes a 68-month Plan; however, the nonstandard provisions define payments only through September 2022, which would

be a 64-month Plan. The Trustee requests the motion be denied unless the Plan length and plan payment amount is clarified.

DEBTOR'S REPLY TO TRUSTEE'S OPPOSITION

The Debtor filed a Reply on February 15, 2022. Dckt. 116. Debtor replies to the Trustee's Opposition as follows:

A. Counsel for Debtor made a typographical error, thus the Plan erroneously states that it will take 68 months to complete, whereas it should read 64 months.

DISCUSSION

Length of Plan

The Trustee's concerns have been addressed. The length of the Modified Plan is 64 months.

The Modified Plan 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, Jeffrey Clement and Rhiannon Clement ("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 21, 2022, 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.

11. 19-20125-E-13 ROBERT/DONNA DECELLE MOTION TO MODIFY PLAN
PGM-10 Peter Macaluso 2-1-22 [179]

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 February 1, 2022. By the court's calculation, 43 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.

The debtor, Robert Aurther DeCelle, III and Donna Marie DeCelle ("Debtor") seek confirmation of the Modified Plan because of a continuing financial hardship due to the covid pandemic. Declaration, Dckt. 182. The Modified Plan provides:

1. Debtor has paid a total of $57,729.00 through and including January 2022 (month 36 of the Plan).

2. Plan payments of $365.000 per month will commence February 25, 2022 for 48 months.

3. Class 1 claim for conduit, pre and post petition arrears is reduced to the amount already paid by the Trustee and is Class 4 pursuant to a loan modification effective March 2021.

4. Class 2 Claim of Golden One for a 2015 Kia Sorento is reduced to the amount already disbursed and is changed to Class 3 - Surrender effective

April 2021.

5. Class 2 claim RoundPoint is reduced to the amount already paid by the Trustee and is Class 4 pursuant to a loan modification effective March 2021.

6. Attorney for Debtor will apply for additional attorney fees not to exceed $2,000.00 and if approved, shall be paid in a manner consistent with the plan.

Modified Plan, Dckt. 181. 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 March 1, 2022. Dckt. 189. Trustee opposes confirmation of the Plan on the basis that:

A. The Plan is not feasible for the following reason:

1. The Debtor is delinquent in Plan payments.

DISCUSSION

Failure to Afford Plan Payment / 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). The Debtor is delinquent in Plan payments. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Delinquency

The Chapter 13 Trustee asserts that Debtor is $365.00 delinquent in plan payments, which represents one month of the $365.00 plan payment. 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).

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, Robert Aurther DeCelle, III and Donna Marie DeCelle ("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.

12. **18-20228-E-13 MWB-4** | **ROBERT/DONNA SEYMOUR** | **MOTION FOR COMPENSATION FOR MARK W. BRIDEN, DEBTORS ATTORNEY(S)**
12 thru 13 | **Mark Briden** | **2-8-22 [122]**

JOINT DEBTOR DISMISSED: 01/10/2022

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 February 8, 2022. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Mark W. Briden, the Attorney ("Applicant") for Robert Cecil Seymour, 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 21, 2021, through February 2, 2022. Applicant requests fees in the amount of $2,020.00 and costs in the amount of $131.58.

Trustee's Response

On March 1, 2022, Trustee filed a Response to Motion for Approval of Additional Attorney Fees and Costs. Dckt. 129. Trustee points out numerous discrepancies between Applicant's Motion and Exhibits as follows:

1. The Motion states that the fees requested are $2,220.00 and costs of $177.02 (DN 122, Page 3, Lines 13-14;) but states, "…. For an Order requiring the sum of attorney fees and costs in the amount of $2,052.50 to be paid for by David P. Cusick…". (Page 3, Lines 15-16)

2. The Declaration states, "The Motion seeks costs of $131.58 and allowing fees of $2,020.00…" (DN 124, Page 2, Lines 14-15.), which appears to contradict Debtor's motion, (see Item 1. above.)

3. The Exhibit appears to miscalculate the total balance of costs and fees at $2,020.00, the total, in this instance, should be $2,151.58 ($2,020,00 fees + $131.58 costs) (DN 125, Exhibit 1, Page 4, Lines 4-7.)

4. The listing of Attorney Fees and Costs (DN 125, Exhibit 1, Page 3) appears to have typographical errors where it states;

    a. the date of service related to Docket Control Number MWB-3 as March 15, 2021. This Docket Control Number pertains to the matter of the Motion to Confirm a Modified Plan (DN 115), set for March 15, 2022 and filed January 20, 2022. (Line 23.)

5. The date of service of February 2, 2022 for Docket Control Number MWB-4 which pertains to this motion (DN 122), where it is set for March 15, 2022 and was filed on February 8, 2022 (Line 25.) In both instances, a description of service is not provided and therefore, can not be determined if fees requested are for anticipated services to be provided

6. It does not appear that the Debtor has filed a declaration or other evidence in support of this application.

Debtor's Declaration

On March 3, 2022, Debtor filed a Declaration in Support of Additional Attorney Fees. Dckt. 132. Debtor represents that he consents to the payment of additional attorney's fees in the amount of $2,020.00 and costs in the amount of $132.58.

Debtor's Attorney's Supplemental Declaration

On March 3, 2022, Applicant filed a Supplemental Declaration of Attorney in Support of additional Attorney Fees and Costs. Dckt. 133. Applicant represents that the service for MWB-4 on February 2, 2022, were for the Motion for Additional Attorney Fees, Notice of Hearing, Declaration of

attorney and postage. Applicant further represents that the correct amount of attorney's fees and costs requested are $2,020.00 and $131.58, respectively.

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 preparation of the following pleadings: Response to Motion to Dismiss; Motion to Modify Plan and supporting documents; and Motion for Additional Attorney Fees and supporting documents. 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. 51. 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)).

REVIEW OF APPLICANT'S PLEADINGS

Applicant's declaration states that the joint debtor, Donna Seymour died of Covid-19. Dckt. 124. Accordingly, they represented the remaining debtor in two motions to dismiss. The surviving debtor attempted to pay off the remaining Plan payments with life insurance proceeds necessitating the filing of an Amended Plan which was filed concurrently with the present motion. Applicant represents that the legal services and costs are necessary and benefitted the bankruptcy estate by paying the creditors 100% in less than 60 months.

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.

Prepare Pleadings: Applicant spent 6.6 hours in this category. Applicant prepared pleadings related to the Motion for Order Modifying Plan, Third Amended Plan, Ex Parte Motion to Dismiss, and Opposition to Motion to Dismiss.

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**
Mark W. Briden	6.6	$300.00	$1,980.00
Total Fees for Period of Application			$1,980.00

The court notes there are numerous discrepancies between Applicant's Motion, Exhibits, and Supplemental Declaration. In Applicant's Motion, Applicant requests fees for 7.4 hours at an hourly rate of $300.00. Dckt. 122. In their Motion, Applicant states this amount is $2,220.00.

However, in Applicant's Supplemental Declaration, the amount requested is for $2,020.00. Dckt. 133. Additionally, in the Exhibits, Applicant requests $2,020.00. Dckt. 125.

Also, in the Exhibits, Applicant states they have only spent 6.6 billable hours for the time period requests. 6.6 hours at a $300.00 hourly rate yields total fees of $1,980.00, not $2,020.00.

The court approves fees in the amount of $1,980.00, for the 6.6 hours billed as evidenced in Applicant's Exhibits. Dckt. 125.

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $131.58 pursuant to this application

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Postage	$71.34	$71.34
Postage	$16.24	$16.24
Postage	$44.00	$44.00
Total Costs Requested in Application		$131.58

FEES AND COSTS & EXPENSES ALLOWED

Fees

The unique facts surrounding the case, including the preparation of pleadings related to the Motion for Order Modifying Plan, Third Amended Plan, Ex Parte Motion to Dismiss, and Opposition to

Motion to Dismiss, 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 $1,980.00 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 $131.58 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

The court authorizes the Chapter 13 Trustee under the confirmed plan to pay 100% of the fees and costs allowed by the court.

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

Fees	$1,980.00
Costs and Expenses	$131.58

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 Mark W. Briden ("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 Mark W. Briden is allowed the following fees and expenses to be paid from trust as a professional of the Estate:
>
> Mark W. Briden , Attorney for Debtor
>
> Fees in the amount of $1,980.00
> Expenses in the amount of $131.58,
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for Debtor.

.

13. **18-20228-E-13 MWB-3** **ROBERT/DONNA SEYMOUR** **Mark Briden** **MOTION TO MODIFY PLAN 1-20-22 [117]**

JOINT DEBTOR DISMISSED: 01/10/2022

Final Ruling: No appearance at the March 15, 2022 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 January 20, 2022. By the court's calculation, 55 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. The debtor, Robert Cecil Seymour ("Debtor"), has filed evidence in support of confirmation. No opposition to the Motion has been filed by creditors. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on February 22, 2022. Dckt. 127. The Modified Plan 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, Robert Cecil Seymour ("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 20, 2022, 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 Trustee will submit the proposed order to the court.

14. 21-21036-E-13 PGM-5 — JEFFREY/YELENA MAYHEW — Peter Macaluso — MOTION TO MODIFY PLAN — 1-31-22 [81]

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 31, 2022. By the court's calculation, 43 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.

The debtor, Jeffrey Scott Mayhew and Yelena Mikhaylovna Mayhew ("Debtor") seeks confirmation of the Modified Plan because of multiple factors which caused Debtor to become delinquent, and confirmation of Debtor's proposed Plan will allow Debtor to begin remitting payments.

Declaration, Dckt. 83. These factors include: Debtor's car engine broke down which prevented Debtor from working; Debtor and family members were infected with COVID-19; Debtor's pet canine required an expensive medical procedure; and Debtor lost over $200.00 a month in retirement annuity as a result of Debtor's increased life insurance. *Id.* The Modified Plan provides $4,815.00 to be paid commencing January 25, 2022 for 51 months, and a zero (0) percent dividend to unsecured claims totaling $382,018.34. Modified Plan, Dckt. 85. 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 24, 2022. Dckt. 91. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor's supplemental schedule J removed a $300.00 expense for self-employment taxes but still shows the same self-employment income.

B. Debtor does not explain why the reasons for Debtor's delinquency are not likely to reoccur when Plan payments under Debtor's proposed Plan are higher than the payments under the original Plan.

DISCUSSION

Unexplained Reduction in Expenses

The Chapter 13 Trustee argues that the Plan is not feasible according to 11 U.S.C. § 1325(a)(6) because Debtor's supplemental Schedule J removed a $300.00 expense for self-employment taxes that was found on the original Schedule J. Dckt. 91 at 1:24-26. Trustee notes that, however, Debtor's supplemental Schedule J still shows the same self-employment income of "INSTACART DRIVING $2700 - $900 EXPENSES $1,830.00." *Id.* at 1:26-27. Debtor's present Motion does not explain this reduction in self-employment tax expenses, and neither does Debtor's Declaration in support nor Exhibit. Absent explanation from Debtor as to how Debtor is no longer paying self-employment taxes yet still expecting to receive self-employment income from the same source of work, the court is unable to discern whether Debtor's projection is in good faith. That is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(3).

Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The Chapter 13 Trustee states that Debtor has not explained why their reasons for their delinquency in the first place was not likely to reoccur, especially considering Debtor's proposed Plan increases from $4,450.00 in the original Plan to $4,815.00 in the proposed Plan. Dckt. 91 at 2:2-4.

Trustee notes several concerns regarding Debtor's supplemental Schedule J:

A. Debtor's original schedule J listed transportation expenses of $450.00, which was clearly inadequate based on Debtor's reported costs of $8,100.00 in total to repair their car engine and transmission. Declaration, Dckt. 83 at ¶ 2.

B. Debtor's original schedule J listed home repair expenses as $100, which Trustee notes was insufficient to cover Debtor's $1,200.00 costs for unexpected home repairs. Dckt. 91 at 2:9-11. Debtor's home repair expense in their supplemental schedule J decreased home repair expenses to $35.00, but Debtor has not provided an explanation for the reduction or why they do not anticipate other home repairs that may far surpass $35.00.

C. Debtor's original schedule J listed monthly pet expenses as $150.00, which Trustee notes was insufficient to cover Debtor's $1,000.00 medical costs for Debtor's pet. Dckt. 91 at 2:13.

D. Debtor proposes to gross $2,700.00 in monthly income from INSTACART DRIVING, which remains unchanged from Debtor's original Schedule J. See Dckt. 91 at 2:6. However, Debtor's supplemental schedule J indicates that Debtor continues to pay $600.00 a month for support of an elderly mother, $100.00 for tobacco products, and $150.00 for pet expenses. Dckt. 86 at 7. Trustee further notes that Debtor's supplemental schedule J does not indicate whether Debtor's adult stepson, whom Debtor is also financially supporting, has an income or contributes to the household. Dckt. 91 at 2:14-15.

Based on the above, it appears that many of the estimated monthly expenses in Debtor's original schedule J were vastly below what Debtor actually incurred. Trustee's concern is that Debtor has not provided a reason for why they will be able to afford the proposed Play payment of $4,815.00 when Debtor continues to make the same monthly gross income, does not receive any contributions from other household members, and may continue to incur unexpected expenses that are far above what Debtor estimated on their supplemental schedule J. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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, Jeffrey Scott Mayhew and Yelena Mikhaylovna Mayhew ("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.

15. 21-23539-E-13 PGM-1 15 thru 17

DEREK WOLF
Peter Macaluso

MOTION TO CONFIRM PLAN
1-21-22 [56]

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 21, 2022. By the court's calculation, 53 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 Amended 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 Amended Plan is denied.

The debtor, Derek L. Wolf ("Debtor") seeks confirmation of the Amended Plan because Debtor needed to use some of the money they allotted for their Plan payments to hire an attorney to properly process Debtor's Chapter 13 Plan. Declaration, Dckt. 58. The amended Plan provides payments of $1,960.00 for 57 months, and a zero (0) percent dividend to unsecured claims totaling $13,044.37. Amended Plan, Dckt. 60. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CREDITOR'S OPPOSITION

U.S. Bank, National Association ("Creditor") holding a secured claim filed an Opposition on February 28, 2022. Dckt. 73. Creditor opposes confirmation of the Plan on the basis that:

A. Debtor's Schedules do not indicate proper tax deductions, and Creditor believes that when proper deductions are factored in it will become apparent that Debtor does not have enough net disposable income to

fund their proposed Plan.

B. Debtor's proposed Plan was not filed in good faith.

C. 11 U.S.C. § 522(f) prohibits Debtor from modifying Creditor's secured claim.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee") filed an Opposition on March 1, 2022. Dckt. 75. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor may not be able to afford the Plan payments under Debtor's proposed Plan.

B. There is a discrepancy between the amount of attorney's fees Debtor's Attorney will receive according to the proposed Plan and the amount of attorney's fees Debtor's Attorney will receive according to the Statement of Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys and The Disclosure of Compensation of Attorney for Debtor.

C. Debtor's has still not provided additional business and income verification pursuant to o 11 U.S.C. §521(a)(1)(B)(iv) and 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3).

DEBTOR'S RESPONSE

On March 8, 2022, Debtor filed a response stating they intend to be current as of the hearing date. Dckt. 80. Additionally, Debtor states their attorney has been paid in full and all 11 U.S.C. § 521 documents have been provided to the Trustee.

DISCUSSION

Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Both Creditor and Trustee states their belief that Debtor may be unable to make the payments under Debtor's proposed Plan. Creditor notes that Debtor's amended Schedules show that Debtor has no payroll deductions and the only other taxes Debtor expects incur each month are $35.00 in "Personal Taxes" and $15.00 in "DMV" taxes. See Amended Schedules, Dckt. 71 at 5 & 7. Creditor asserts that when the proper deductions are factored in to Debtor's monthly income, it will show that Debtor does not have enough net disposable income to make the payments under Debtor's proposed Plan. Dckt. 73 at 7:1-2.

Trustee additionally states that Debtor's Amended Business Income and Expenses (see Dckt. 71 at 8) shows that Debtor's *yearly* business income is $8,500.00 and the estimate average net *monthly* income is $2,100.00. Dckt. 75 at 1-2. Trustee questions how Debtor makes a net average of $2,100.00 per month if Debtor's total yearly business income is $8,500.0. *Id.* at 2:1-3. With this concern, Trustee

is unsure of Debtor's capacity to afford Plan payments under Debtor's proposed Plan.

Creditor and Trustee's noted concerns indicate that the filings provided by Debtor in support of Debtor's Motion to Confirm Amended Chapter 13 Plan do not provide enough transparency of Debtor's finances. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Attorney's Fees

Trustee states that Debtor's Amended Plan §§ 3.05 and 3.06 indicate that Debtor's Attorney is accepting a fee of $4,000.00, where $3,800.00 was paid prior to the filing of this case and an additional $200.00 fee will be paid through Debtor's proposed Plan at $50.00 per month. Dckt. 72 at 2:5-7. Trustee notes this is a discrepancy from what is stated on the Statement of Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys, which states that initial fees charged in Debtor's case is $4,000.00 and that the full $4,000.00 fee was paid by the Debtor prior to the filing of this case. See Statement of Rights and Responsibilities, Dckt. 52 at 3. Trustee states that they cannot recommend confirmation without clarification of this discrepancy. Dckt. 75 at 2:13-14.

Debtor's response states their attorney has been paid in full.

At the hearing, XXXXXXXXXX

Failure to File Documents Related to Business

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

A. Verification of income;
B. Two (2) years of tax returns, specifically for years 2019 and 2020;
C. Six (6) months of profit and loss statements, specifically from May 2021 through October 2021; and
D. Six (6) months of bank account statements, specifically from May 2021 through October 2021

Dckt. 75 at 3; *see also* Status Report, Dckt. 78.

The documents listed above are required pursuant to 11 U.S.C. §521(a)(1)(B)(iv), 11 U.S.C. § 521(e)(2)(A), and FRBP 4002(b)(3). Dckt. 75 at 3:11-12. Without the information found in these missing documents, it is unclear to the Trustee whether Debtor is financially capable of complying with Debtor's proposed Plan. *Id.* at 3:15-16.

Debtor's response states they have provided all necessary documents.

At the hearing, XXXXXXXXXX

Plan Not Proposed in Good Faith

11 U.S.C § 1325(a)(3) provides that one of the factors a Plan must satisfy to be confirmed by

a court is that the Plan must have been proposed in good faith "and not by any means forbidden by law." Creditor asserts that Debtor's proposed Plan was not filed in good faith because Debtor does not have sufficient disposable income to fund the Plan, Debtor has not made any of the required Plan or mortgage payments, Debtor does not generate sufficient income to fund the Plan, and this is Debtor's fourth (4^{th}) consecutive Bankruptcy case in the last two (2) years. Dckt. 73 at 7:8-13.

Modification of an Obligation Secured Only by Principal Residence

Creditor argues that Debtor's Plan was not filed in good faith and is an improper modification of a claim secured only by a security interest in real property that is Debtor's principal residence. The court notes that Creditor cited 11 U.S.C. § 522(f) as the authority on this issue, however, such impermissible modification on Debtor's part is a violation of 11 U.S.C. § 1322(b)(2), which specifically prohibits the modification of an obligation secured only by Debtor's residence

Creditor has filed a Proof of Claim indicating a secured claim in the amount of $164,860.13, secured by a First deed of trust against the property commonly known as 7995 Alta Vista Lane, Citrus Heights, CA 95610, California. Debtor's Schedules indicate that this is Debtor's primary residence.

The alleged "modification" is the curing of post-petition arrearages through the Plan. No authority is given for a debtor not being allowed to cure a post-petition default through a Chapter 13 plan.

At the hearing, **xxxxxxx**

~~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, Derek L. Wolf ("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.~~

16. 21-23539-E-13 DEREK WOLF CONTINUED MOTION TO DISMISS

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 (*pro se*) and Office of the United States Trustee on November 22, 2021 By the court's calculation, 44 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 xxxxxxxx.

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

1. the debtor, Derek L Wolf ("Debtor"), failed to appear at the First Meeting of Creditors. The Trustee does not have sufficient information to determine if the Plan is suitable for confirmation under 11 U.S.C. §1325. Therefore, the meeting has been continued to January 13, 2022 at 1:00 p.m

2. Plan has not been served on all interested parties and no Motion to Confirm Plan is pending. A confirmation hearing is normally to be held not later than 45 days after the first meeting of creditors

3. No payment advices have been received from the sixty (60) days prior to filing.

4. No tax returns have been provided to the trustee for the most recent pre-petition tax year.

5. Debtor has failed to provide two (2) years of tax returns, six (6) months of profit and loss statements, six (6) months of bank statements, proof of license and insurance or written statements that no such documentation exists.

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).

Never Noticed Initial Plan

Debtor did not properly serve the Plan on all interested parties and has yet to file a motion to confirm the Plan. The Plan was filed after the notice of the Meeting of Creditors was issued. Therefore, Debtor must file a motion to confirm the Plan. *See* LOCAL BANKR. R. 3015-1(c)(3). A review of the docket shows that no such motion has been filed. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Failure to Provide Pay Advices

Debtor has not provided Trustee with employer payment advices for the period of sixty days 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). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Failure to Provide Tax Returns

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). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Failure to File Documents Related to Business

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

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

Status of Case

At the recent hearing on a Motion for Relief From the Stay in this Case (which Debtor appeared after the hearing had been concluded due to telecommunications suffered by Debtor that day), the court and Debtor discussed the need for Debtor to obtain counsel to effectively prosecute this case and any rights Debtor may have concerning his home mortgage. Debtor's pro se efforts in 2020 and 2021 have not been successful.

Trustee's Status Report

On December 29, 2021, Trustee filed a status report stating Debtor is still $1,500.00 delinquent in Plan payments and Debtor has failed to provide verification of income, 2 years of tax returns, 6 months of profit and loss statements and 6 months of bank statements. Dckt. 39. Trustee still requests the court grant the Motion.

January 5, 2022 Hearing

At the hearing, counsel for the Trustee reported that Debtor has made one of the two plan payments to date. A continued meeting is set for January 15, 2022, Debtor having not appeared at the prior 341 Meeting. Debtor has not filed a motion to confirm the plan.

Proposed counsel for Debtor was present at the hearing. The hearing is continued to be conducted in conjunction with a motion for relief from the stay and to afford Debtor the opportunity to get proposed counsel substituted into the case.

January 11, 2022 Hearing

At the hearing, Peter Macaluso, Esq., an experienced consumer attorney, appeared and confirmed that he has been engaged by the Debtor and that Mr. Macaluso would be substituting in as counsel for Debtor. Additionally, that he would work diligently with Debtor to prosecute this case and for Debtor to advance his economic interests as permitted under the Bankruptcy Code in this case. In light of Debtor's repeated failures in prosecuting prior Chapter 13 cases, such clear guidance and legal advice from counsel is necessary. Debtor is now facing the highly likely granting of relief pursuant to 11 U.S.C. § 362(d)(4) and the dismissal of this case if he cannot prosecute it.

The court notes that based on Debtor's Schedules and Movant's statement of the amount of debt secured by Debtor's residence, Debtor would have approximately $116,000 in equity (after costs of sale) in the property. In looking at Zillow.com statement of value of the property, the equity would be approximately $156,000.

This is a substantial asset which Debtor almost recently lost, having filed bankruptcy the day of the foreclosure sale. Fortunately for Debtor, the buyer at the foreclosure sale backed out of the sale and Movant is no longer seeking an annulment of the stay, but prospective relief pursuant to 11 U.S.C. § 362(d)(1) and (d)(4).

Debtor, in his *pro se* Opposition to the Motion for Relief, addresses some real life family events impacting his life. Dckt. 28. While retaining the home, if possible, would be a better result in Debtor's eyes, if that is financially impossible, losing $150,000+ in equity and not having that in structuring his life for the benefit of himself and his family would be a disaster.

The court made it clear to Debtor's counsel that Debtor needs to prosecute this case and show due diligence if there would be further continuances of the hearing on this Motion for Relief and the Trustee's Motion to Dismiss.

January 19, 2022 Status Report

On January 19, 2022, Chapter 13 Trustee David P. Cusick filed a status report stating Debtor and Debtor's Counsel, Peter Macaluso, appeared at the Meeting of Creditors on January 13, 2022. Dckt.

54. Trustee reports Debtor is delinquent $1,500.00 on plan payments. Additionally, Debtor has not provided the following:

1. Verification of income

2. Two years of tax returns (2019 and 2020)

3. Six months of profit and loss statements (May 2021 - October 2021)

4. Six months of bank statements (May 2021 - October 2021)

Trustee requests the court grant the Trustee's Motion to Dismiss.

January 25, 2022 Hearing

At the hearing Debtor's new counsel appeared and reported on the progress in the prosecution of this case and the Plan that has now proposed. Counsel stated that Debtor understands that this is his last Chapter 13 chance in light of the repeated unsuccessful *pro se* attempts.

March 1, 2022 Status Report

On March 1, 2022, Chapter 13 Trustee David P. Cusick filed a status report stating Debtor is current in Plan payments and has provided the following documents:

1. Business Questionnaire

2. Profit and Loss Statement for November 2021

3. 2020 Federal and State Income Tax Summary

Dckt. 78 at 2:1-3.

However, Trustee notes that Debtor has still not yet provided the following documents:

1. Verification of income

2. Two years of tax returns (2019 and 2020)

3. Six months of profit and loss statements (May 2021 through October 2021)

4. Six months of bank statements (May 2021 through October 2021)

Id. at 2:3-5.

Trustee requests the court grant the Trustee's Motion to Dismiss. Further, a secured creditor and the Trustee both opposed Debtor's Motion to Confirm Amended Chapter 13 Plan. See Dckt. 73 and Dckt. 75. Based on the multiple objections raised by the creditor and Trustee, the court has tentatively denied Debtor's Motion to Confirm.

At the hearing xxxxxxxx.

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 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 Motion to Dismiss is xxxxxx.

17. **21-23539-E-13** **DEREK WOLF** **CONTINUED MOTION FOR RELIEF**
DVW-1 **Peter Macaluso** **FROM AUTOMATIC STAY**
U.S. BANK, NATIONAL **10-19-21 [11]**
ASSOCIATION VS.

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.

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

The Motion for Relief from the Automatic Stay 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. The court continued the hearing, opposition and rely briefs were filed, and the final hearing set for December 14, 2021.

The Motion for relief from the Automatic Stay is xxxxxxxx.

U.S. Bank, N.A. as Legal Title Trustee for Truman 2016 SC6 Title Trust ("Movant") seeks relief from the automatic stay with respect to Derek Wolf's ("Debtor") real property commonly known as 7995 Alta Vista Lane, Citrus Heights, California ("Property"). Movant has provided the Declaration of Brian Gaske to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues on October 12, 2021, without any notice of filing of Debtor's fourth consecutive bankruptcy case, Movant conducted it's foreclosure sale on the property. Motion, Dckt. 11. At the time of the foreclosure sale, Debtor was due 25 months worth of mortgage payments, with a total of $25,150.25 in payments past due. Declaration, Dckt. 19. Movant specifies that due to the three prior consecutive bankruptcies prior to this one—all of which were dismissed—the nature of these payments as post or pre petition is not clear.

Movant requests several types of relief in this case. First, the annulment of the stay to make the foreclosure sale valid. Second, to terminate the stay going forward. Third, that the court order

pursuant to 11 U.S.C. § 362(d)(4) that the automatic stay in a future filed case in the next two years will not automatically go into effect.

Trustee's Non-Opposition

Trustee has filed a non-opposition to this motion on October 26, 2021 (Dckt. 21). Trustee reaffirms that the Debtor has failed to file the following documents:

a. Chapter 13 Plan
b. Form 122C-1 Statement of Monthly Income
c. Schedule A/B - Real and Personal Property
d. Schedule C - Exempt Property
e. Schedule D - Secured Creditors
f. Schedule E/F - Unsecured Claims
g. Schedule G - Executory Contracts
h. Schedule H - Codebtors
i. Schedule I - Current Income
j. Schedule J - Current Expend.
k. Statement of Financial Affairs
l. Summary of Assets and Liabilities

Furthermore, Trustee notes the Creditor's Motion for Notice of Sale was recorded against said property on September 15, 2021 to schedule a foreclosure sale for October 12, 2021. This was the same time in which the bankruptcy was filed, and the Debtor was still delinquent for 25 months for no less than $25,150.25 (Dckt. 11).

Review of File

Debtor commenced this case on October 12, 2021. On October 27, 2021, a chapter 13 Plan was filed. Dckt. 24. The Plan provides for monthly payments by Debtor of $1,500 for sixty (60) months. Plan, Nonstandard Provisions; Dckt. 24 at 7. Additionally, Debtor will pay the Plan off early "if awarded settlement from Social Security." *Id.*

The only claim provided for in the Plan is Movants, for which Debtor is to pay $500 a month toward the $29,254.55 arrearage and $1,016.32 for the post-petition monthly payment. These two payment total $1,516.32, which is slightly more than the $1,500 a month play payment.

However, the Debtor has not accounted for the Chapter 13 Trustee fees paid out of the $1,500 a month payment. The Trustee's fee is 10%, so from the $1,500 payment, there is deducted $150 for Trustee fees. This results in Debtor's monthly payment being $166 short each month.

Debtor does not list any other creditors on Schedules D or E/F. Dckt. 23.

On Schedule I, Debtor states that he has $1,650 a month in net income from his business, $358 in CALPERS Death Benefit, and $750 in rents, for total monthly income of $2,758. *Id.* At the end of Schedule I Debtor states that a possible increase in income can occur "If I receive claim from Social Security." He also states, "X Wife + Daughter recently received 5.5 Mil Judgment From RUCCI."

For expenses, on Schedule J Debtor lists $1,258 in total expenses, with nothing for self-employment or income taxes. For Expenses, Debtor states having:

A. Food and housekeeping supplies.....($375)

1. Assuming ($50) for housekeeping supplies, that leaves ($325) for food, which in a 30 day months equals $3.61 cents per meal.

B. Debtor has no medical or dental expenses.

C. Debtor has no home repair or maintenance expenses.

Id.

At the end of Schedule J, in response to whether Debtor expects an increase or decrease in expenses, Debtor states:

> If Rushmore will finally be fair and recognize my Mod Package that they have on file.

Schedule A - Value of Property

On Schedule A/B Debtor lists the property that is the subject of the foreclosure sale as having a value of $310,000. *Id*. On Schedule D Debtor lists Creditor as having a claim of $145,985. *Id*. In the Motion, Movant states that as of the time of the foreclosure sale, the balance owed was $163,476.40, and that the buyer at the sale paid $276,000.00. Motion, ¶¶ 7, 8; Dckt. 11. Presumably there will be almost $100,000+/- in surplus sales proceeds to be disbursed to Debtor if the stay is annulled.

DISCUSSION

Annulment of Stay

As is well established in the Ninth Circuit, an act taken in violation of the automatic stay is void, not merely voidable. *Far Out Productions, Inc. v. Oskar et al.*, 247 F.3d 986, 995 (9th Cir. 2001); (*In re Schwartz*),954 F.2d 569, 571 (9th Cir. 1992).

Congress provides for the court to annul the automatic stay so as to render what was void to not be void. However, retroactive annulment of the automatic stay is within the discretion of the court. *Nat'l Envtl. Waste Corp. v. City of Riverside (In re Nat'l Envtl. Waste Corp.)*, 129 F.3d 1052, 1054 (9th Cir. 1997). The court, in making a case-by-case review, must balance the equities to determine if annulment is justified. Id. at 1055. Though not dispositive, most courts consider two factors: "(1) whether the creditor was aware of the bankruptcy petition; and (2) whether the debtor engaged in unreasonable or inequitable conduct, or prejudice would result to the creditor." *Id.*

In re Fjeldsted, the bankruptcy Appellate Panel for the Ninth Circuit expanded the factors a court may consider when deciding whether to annual the stay: the number of times a debtor has filed a petition; the extent of any prejudice, including to a bona fide purchaser; the debtor's overall good faith;

the debtor's compliance with the Code; how quickly the creditor moved for annulment; and how quickly the debtor moved to set aside the action which occurred. *In re Fjeldsted*, 293 B.R. 12, 24-25 (B.A.P. 9th Cir. 2003).

The court reviews the various framework of factors and states how they apply in this Motion as follows:

***Nat'l Envtl. Waste Corp* Factors**

(1) Whether the creditor was aware of the bankruptcy petition;

Based on the evidence presented, Movant was not aware of this bankruptcy filing and the existence of the automatic stay. The Movant conducted due diligence by running a PACER search prior to the foreclosure sale, and Movant received no notice of the filing as the day of the sale was also the date of filing. Dckt. 4.

(2) Whether the debtor engaged in unreasonable or inequitable conduct, or prejudice would result to the creditor.

The evidence as it stands shows Movant would be prejudiced if the stay is not annulled. Movant had already conducted a sale in good faith and with a bona-fide, third party purchaser, and Movant conducted the sale with their due diligence to ensure they were not impeding on the Debtor's rights. Debtor failed to file or notify the Movant at any time between the Notice of the Sale on September 15, 2021 and the date of the sale on October 12, 2021. Additionally, Debtor waited until the date of the sale to file this Chapter 13 case. This unreasonable delay in filing and proper notice directly prejudices the creditor by thwarting their good-faith foreclosure sale of the home for almost 2 years of delinquency. To not annul the stay would cause the bona fide purchaser to be harmed as they relied on the assumption the sale was legally binding and proper to purchase the property.

***In Re Fjeldsted* Factors**

Under the *In re Fjeldsted* factors, the Panel looked at refining and providing further guidance to the court as to factors that may apply. Relevant factors here include:

A. Whether creditors knew of the stay but nonetheless took action, thus compounding the problem;

Reiterating the foregoing, Movant was unaware of the bankruptcy. Movant did not receive notice of the bankruptcy on the master address list provided by the Debtor. Additionally, the Bankruptcy was filed on the exact date of the foreclosure sale, giving little time to receive notice even if it was properly sent. Movant has taken no further action since receiving notice, including issuing, executing, delivering, and/or recording the foreclosure deed.

B. How quickly creditors moved for annulment, or how quickly debtors moved to set aside the sale or violating conduct;

Again, the Bankruptcy was filed on the exact date of the foreclosure sale: October 12, 2021. This Motion was filed approximately seven (7) days after the petition was filed and the sale.

C. Whether, after learning of the bankruptcy, creditors proceeded to take steps in continued violation of the stay, or whether they moved expeditiously to gain relief;

Movant has taken no further action regarding the sale since receiving notice of the bankruptcy case. Therefore, Movant has not continued to act in violation of the stay.

D. Whether annulment of the stay will cause irreparable injury to the debtor;

There is no showing that annulling the stay will cause irreparable injury to the Debtor. However, at the hearing, Debtor argued that he wants to keep the house, wants Movant to modify the loan, and believes that Movant has not fulfilled its obligations relating to his right to modify the loan.

The court sets this Motion for a briefing schedule, this Motion having been filed using the time shortening Local Bankruptcy Rule 9014-1(f)(2) procedure for which no written opposition is required to be filed before the initial hearing.

The court addressed with the Debtor that in considering the Motion, the court would be considering Debtor's ability to prosecute this case, and that "merely" disputing Movant's claim or asserting that Debtor has a claim to be prosecuted against Movant would not necessarily be grounds to deny the Motion. The court addressed with Debtor his multiple prior failed attempts at prosecuting Chapter 13 cases.

Withdrawal of Request to Annul

At the hearing Movant notified the court that the buyer at the foreclosure sale has terminated the contract in light of the circumstances, and Movant was no longer seeking to annul the stay.

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

Many of the factors identified above are asserted as grounds for relief pursuant to 11 U.S.C. § 362(d)(4), asserting that the multiple, ineffective bankruptcy filings demonstrate a scheme to hinder, delay, or defraud Movant with respect to its interests in the Property.

Relief Pursuant to 11 U.S.C. § 362(d)(1)

Movant also asserts that cause exists to modify the stay, whether or not it is annulled to allow Movant to enforce its rights in the Property

Debtor's Opposition

On November 19, 2021, Debtor filed an opposition to the Motion for Relief. Debtor states they need more time to reconcile their mortgage with U.S. Bank. Additionally, Debtor states they are missing accounting for $91,600.00 that Keep Your Homes California granted him in 2018. Debtor also disputes penalties and fees of Rushmore and provides exhibits.

Movant's Response

Movant filed a reply in response to Debtor's opposition to the Motion for Relief from

Automatic Stay on December 2, 2021. Dckt. 33. Movant states that Debtor fails to:

a. Address Movant's request to annul the automatic stay; or

b. Provide any evidence that the Debtor provided any notice to Movant or its agents or representatives of his Bankruptcy filing prior to the foreclosure sale, or any ability to be a successful Debtor in this recent Chapter 13 case.

Additionally, Movant states the Debtor has had the opportunity in his three bankruptcy filings to object to Movant's Proof of Claim or reconcile his mortgage, but has not done so. Also, Debtor asserts that payments were made to Movant in his prior case. In Debtor's Case No. 20-22852, no pre-petition arrears were paid to Movant. Movant also believes the Mortgage Assistance loan received which was sufficient to bring the Debtor's loan current as of February/March 2018, "was in the sum of only $61,131.14, and NOT the entire $91,700 as alleged by the Debtor, and that the Debtor's account was credited for that amount on or around March 20, 2018 by U.S. Bank, the then servicer of Debtor's loan. Movant has to date been unable to locate any evidence that the sum of $91,700 was received from the Mortgage Assistance loan/program."

Movant concludes that Debtor has set forth no substantive Opposition to Movant's request to terminate and/or annul the stay and as such the Motion should be granted as requested. Movant requests (I) *in rem* relief from the automatic stay, as set forth in its Motion, to proceed to conduct another sale of the Property and (ii) a finding that Movant's previously conducted sale of the Property did not violate the automatic stay.

CHANGE OF WHAT COURT STATED AT THE FIRST HEARING CONDUCTED ON DECEMBER 15, 2021

This matter was required to be reset from the regular December 14, 2021 hearing date to December 15, 2021. This was because of the explosion of the SMUD (Sacramento Municipal Utility District) electricity transformer which supplies power to the Federal Courthouse in Sacramento. This explosion resulted in a six block radius of power outages. The Federal Court could not operate.

The hearing was rescheduled on short notice to 2:00 p.m. on December 15, 2021. Movant's counsel appeared telephonically for the hearing, but Debtor, who was listed to telephonically appear, did not. At the hearing, the court announced that the relief requesting annulment of the stay was dismissed, but that the court would grant relief pursuant to 11 U.S.C. § 362(d)(1) and § 362(d)(4). In granting such relief, Debtor would still have approximately 40 days to try to prosecute this case.

Later during the court's calendar, CourtCall advised that the Debtor had connected to make an appearance. Debtor explained that difficulties had ensured that caused him being unable to connect timely. Debtor also stated that he appeared physically at the Courthouse for the December 14, 2021 hearing, but that the Courthouse was closed.

Debtor explained the various events and "real life" circumstances that derailed the prior cases. Debtor states that he is a former loan officer and that Movant's employees (not the attorneys) purport to be addressing the miscalculation issues Debtor identified.

Debtor has attempted since November 21, 2019, attempted four (including the current case),

which consist of one Chapter 7 case, in which Debtor was granted a discharge, two Chapter 13 cases in 2020, with the last one dismissed August 27, 2021 (case 20-22852). Debtor has attempted to prosecute the three Chapter 13 cases in *pro se*.

Debtor commenced the current case on October 12, 2021, which is within one year of case 20-22852 being dismissed on August 27, 2021. Debtor asserts in the Opposition (Dckt. 28) that there is unaccounted for monies not accounted for by Movant,, that he has demanded accountings, and that he disputes the amount stated as owed by Movant.

The Disputes over substantive rights between Debtor and Movant go well beyond the considerations of a motion for relief from the automatic stay.

> Relief from stay proceedings are primarily procedural. *Veal v. Am. Home Mortgage Serv., Inc. (In re Veal)*, 450 B.R. 897, 914 (9th Cir. BAP 2011). They typically determine whether the equities justify releasing the moving creditor from the legal effect of the automatic stay. *Id.* Because of the limited scope of inquiry, neither the movant's claim nor its security should be litigated in the relief from stay proceeding. *Id.* (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740-41 (9th Cir. 1985)); *see also Grella v. Salem Five Cent Sav. Bank*, 42 F.3d 26, 33 (1st Cir. 1994) ("We find that a hearing on a motion for relief from stay is merely a summary proceeding of limited effect. . . ."). "Given the limited nature of the relief, . . . the expedited hearing schedule § 362(e) provides, and because final adjudication of the parties' rights and liabilities is yet to occur, . . . a party seeking stay relief need only establish that it has a colorable claim . . . ." *In re Veal*, 450 B.R. at 914-15 (emphasis added) (citing *United States v. Gould (In re Gould)*, 401 B.R. 415, 425 n.14 (9th Cir. BAP 2009)).

Harms v. Bank of N.Y. Mellon (In re Harms), 603 B.R. 19, 27 (B.A.P. 9th Cir. 2019).

The Chapter 13 Trustee has now filed a Motion to Dismiss this Chapter 13 Case. Dckt. 29. The grounds stated by the Trustee are: (1) Debtor has failed to attend the First Meeting of Creditors; (2) the Chapter 13 Plan has not been served and no motion to confirm a plan has been filed; (3) Debtor has not provided payment advices to verify income; (4) Debtor has not provided copies of required tax returns; and Debtor has not provided the Trustee with the required documents for Debtor's business.

While filing Chapter 13 cases, Debtor has been unable to prosecute, confirm, and perform a Chapter 13 Plan. From the Opposition, Debtor identifies substantive disputes with Movant that require adjudication, and not"?merely" a monetary default to be cured. With respect to the substantive dispute, Debtor offers no evidence of his moving forward to diligently prosecute a Chapter 13 case (using the automatic stay in lieu of a preliminary injunction), but instead the record shows using the automatic say to derail the foreclosure process, and such derailing the extent of Debtor's bankruptcy prosecution.

Santander Consumer USA, Inc. has filed Proof of Claim 1-1 asserting a claim which is partially secured, the collateral being a vehicle, a 2006 Honda Ridgeline. This claim states that there is an $11,444.37 pre-petition arrearage on the claim. POC 1-1, § 9. The Vehicle is not listed on Schedule A/B and Santander (nor is any creditor having a lien against a vehicle) is listed on Schedule D. Dckt. 23. No vehicle payment is shown on Schedule J. *Id*.

In considering this Motion, the court concludes that Movant did not know of the filing of the bankruptcy and did not act in violation thereof. As discussed above, this Bankruptcy Case was filed on the exact date of the foreclosure sale, giving little time to receive notice even if it was properly sent. Movant has taken no further action since receiving notice, including issuing, executing, delivering, and/or recording the foreclosure deed.

The Bankruptcy was filed on the exact date of the foreclosure sale: October 12, 2021. This Motion was filed approximately seven (7) days after the petition was filed and the sale. Movant moved promptly seeking the present relief.

Having learned of the bankruptcy filing, Movant has taken no further action regarding the sale since receiving notice of the bankruptcy case. Therefore, Movant has not continued to act in violation of the stay.

While it not surprising, or shocking, for a consumer (or business) to file bankruptcy to stay/derail a pending foreclosure sale, when there are multiple unsuccessful attempts, it demonstrates that such is not reasonably possible. Annulling the stay does not create an irreparable harm for Debtor, as Debtor has demonstrated that the use of Chapter 13 to address the default and related asserted disputes is not feasible.

Additional Factors

The court must consider the disruption to the court's calendar and the access to the court. With Movant advising the court that annulment of the stay no longer being requested, the purchase having terminated the contract, what has happened in connection with the foreclosure sale takes of a modestly smaller significance.

At the hearing, Debtor demonstrated a real person (non-lawyer) misunderstanding of the federal judicial process. It is not one in which a person raises issues or disputes, and then the judge takes on a mediator type role to work through the issues for the parties.

Federal Court proceedings are litigation, even in the Bankruptcy Court where there is a significantly higher (in this judge's opinion) economic reality of litigation and settlement that some other courts. The court bluntly discussed with Debtor that he must prosecute his claims and disputes, and not merely raise them, drop documents on the court, and then have the court "get the parties together."

The court discussed the need for Debtor to have experienced counsel to prosecute the bankruptcy case and his dispute (if it is not resolvable upon an agreed "computation of the numbers"). While Debtor raises concerns of whether he can afford counsel, there are many attorneys who can and do represent consumers and debtors on a contingent fee or hybrid fee arrangement in these disputes where torts, contract, and statutory claims and theories for relief arise. Alternative, it could be as simple as a knowledgeable attorney being able to effectively communicate the alleged miscomputations by Movant.

With respect to the extraordinary circumstances of the Courthouse closing on the noticed Tuesday hearing date, the quick shuffle the next day to reschedule the hearings for that Wednesday afternoon, and Debtor having been at the Courthouse on the noticed hearing date to find the Courthouse doors barred due to the electrical failure, judicial/litigation discretion is the better part of valor.

The court continued the hearing to 1:30 p.m. on January 11, 2022. Though such might seem to be a significant delay in relief for Movant, as a practical matter it may not have. It may well have taken the court, with the closures and delays caused by the transformer explosion not to be the order issues for 10 days. Then, the order is not effective for fourteen days as provided in Federal Rule of Bankruptcy Procedure 4001(a)(3). That would put Movant into the middle of January 2022 before it could act.

Trustee's Status Report

On December 29, 2021, Trustee David P. Cusick filed a status report stating Debtor is delinquent $1,500.00 in Plan payments and Debtor has failed to provide verification of income, 2 years of tax returns, 6 months of profit and loss statements and 6 months of bank statements.

January 11, 2022 Hearing

For the January 11, 2022 hearing, Movant filed Supplemental Pleadings. Dckts. 43, 44. In the Supplemental Declaration, the testimony includes (identified by paragraph number in the Declaration):

> 5. Debtor states that he received a $91,600.00 loan in approximately February 2018 from the California Help to Homeowner's Program.
>
> 6. A prior loan servicer was responsible for the loan that is the subject of this Motion at that time.
>
> 8., 9. Rushmore, the current loan servicer, has provided Debtor and the proposed counsel for Debtor with documents and records (including those from the period when the prior loan servicer was responsible for this loan), which include:
>
> > a. The sum of $61,131.14 was received and applied to Debtor's loan in 2018.
> >
> > b. Upon further review of the prior loan servicer's files, additional information has been provided Debtor and Debtor's proposed counsel showing that the $91,700 was received in 2018 and applied to Debtor's loan. Exhibit A, Dckt. 44, is a printout of the loan history from the prior loan servicer's records (which unfortunately is not clearly set out in a set of tables, but consists of a lot of words and number squeezed on each page - with the court clearing noting that this is not the records of the current loan servicer, but what they received from the prior loan servicer.
>
> 9a. In the Declaration the obligation under the loan and application of the $91,700 is stated as follows:

Principal Balance 1st Lien	($170,465.08)		($36,400.00)	Deferred Principal 2nd Lien
Application of March 20, 2018 $97,700				
Due Date June 2015		$7,292.61		
Due Date March 2016		$1,620.58		
Due Date May 2016		$1,639.91		
Due Date July 2016		$4,904.70		
Due Date January 2017		$4,904.70		
Due Date July 2017		$4,465.50		
Due Date December 2017		$4,465.50		
Due Date May 2018		$256.35		
Due Date May 2018		$1,019.00		
Due Date May 2018		$61,131.14		
Total Monies Applied		$91,699.99		

11. The $91,700 was applied to the delinquent mortgage payments due for the months of June 1, 2015 through and including May 1, 2018.

In the Motion for Relief, Movant asserts that the arrearage at the time of the foreclosure sale was not less than $25,150.24, which Movant states is for the period October 1, 2019 through October 1, 2021. Motion, ¶ 7; Dckt. 11. Because the Motion was brought to annul the stay for a foreclosure sale that occurred, an analysis of how the arrearage is computed was not provided.

As of the court's January 10, 2022 review of the Docket, a substitution of attorney for the Debtor, giving Debtor counsel rather than attempting to prosecute this case in *pro se*, had not been filed.

Debtor's Prosecution of This Case
Basis for Continuance

At the hearing, Peter Macaluso, Esq., an experienced consumer attorney, appeared and confirmed that he has been engaged by the Debtor and that Mr. Macaluso would be substituting in as counsel for Debtor. Additionally, that he would work diligently with Debtor to prosecute this case and for Debtor to advance his economic interests as permitted under the Bankruptcy Code in this case. In light of Debtor's repeated failures in prosecuting prior Chapter 13 cases, such clear guidance and legal

advice from counsel is necessary. Debtor is now facing the highly likely granting of relief pursuant to 11 U.S.C. § 362(d)(4) and the dismissal of this case if he cannot prosecute it.

The court notes that based on Debtor's Schedules and Movant's statement of the amount of debt secured by Debtor's residence, Debtor would have approximately $116,000 in equity (after costs of sale) in the property. In looking at Zillow.com statement of value of the property, the equity would be approximately $156,000.

This is a substantial asset which Debtor almost recently lost, having filed bankruptcy the day of the foreclosure sale. Fortunately for Debtor, the buyer at the foreclosure sale backed out of the sale and Movant is no longer seeking an annulment of the stay, but prospective relief pursuant to 11 U.S.C. § 362(d)(1) and (d)(4).

Debtor, in his *pro se* Opposition to the Motion for Relief, addresses some real life family events impacting his life. Dckt. 28. While retaining the home, if possible, would be a better result in Debtor's eyes, if that is financially impossible, losing $150,000+ in equity and not having that in structuring his life for the benefit of himself and his family would be a disaster.

The court made it clear to Debtor's counsel that Debtor needs to prosecute this case and show due diligence if there would be further continuances of the hearing on this Motion for Relief and the Trustee's Motion to Dismiss.

January 25, 2022 Hearing

Debtor's newly obtained counsel appeared at the hearing. He reported the efforts being made in the prosecution of this case and now a Chapter 13 Plan set for hearing in March 2022. Counsel also discussed his work with the Debtor to insure that Debtor understood that this case, in light of the many prior cases filed by Debtor in *pro se* that have been dismissed, is his final "fish or cut bait moment."

Debtor's counsel also noted that if the Debtor were to sell the residence now, he would have to repay the grant received, it not being forgiven for nine more years. The court projects that the recoverable equity for Debtor would be lower than previously appearing, but could still be $25,000+ cash.

From a review of the Supplemental Schedules I and J (Schedule I being incomplete and not including the gross income from Debtor's business and rental property), it appears that performing a plan for five years may be problematic.

However, the court notes that Debtor's counsel (Debtor previously having commenced this case in *pro se*) substituted in only two weeks prior to the hearing, this may well be part of the "more work to be done" by Counsel working with Debtor.

The Trustee confirmed that he now has the correct address for Movant and the payment of the amounts in the proposed plan, including past payments, will be made from the funds available to the Trustee.

The court continues this hearing to afford Debtor and his new counsel to "fish" (whether through curing the arrearage through the Plan or selling the Residence and obtaining $25,000+ of exempt

proceeds), rather than merely "cutting bait" and losing the house (and any exempt value) through a foreclosure.

Debtor's Motion to Confirm Plan

Debtor, with guidance from their counsel, filed their Motion to Amend Chapter 13 Plan on January 21, 2022. See Dckt. 56. As discussed in the court's tentative ruling for Debtor's Motion to Confirm, both Movant and the Chapter 13 Trustee have opposed Debtor's Motion on various grounds. See Dckt. 73 and 75. Based on the several deficiencies with Debtor's proposed Plan as noted by Movant and Trustee, the court is tentatively denying Debtor's Motion to Confirm.

March 15, 2022 Hearing

At the hearing, xxxxxxxx.

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 Relief from the Automatic Stay filed by U.S. Bank, N.A. as Legal Title Trustee for Truman 2016 SC6 Title Trust ("Movant"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to for Relief From the Stay is xxxxxx.

18. 21-21745-E-13 FF-2 18 thru 19 | **MICHAEL/CAROL STANFORD Gary Fraley** | **MOTION TO CONFIRM PLAN 1-27-22 [70]**

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 27, 2022. By the court's calculation, 47 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

The debtor, Michael Roland Stanford and Carol Ann Stanford ("Debtor"), seeks confirmation of the Amended Plan. The Motion to Confirm provides that Debtor has paid a total of $45,583.92 between June 2021 through January 31, 2022, and that Debtor promises to pay $7,625.00 per month from February 25, 2022 through May 2026 for a total of 60 months. Dckt. 70 at ¶ 4; Amended Plan, Dckt. 73 at 8.

Debtor explains that the calculated monthly payments to secured creditors are an average of payments made over the course of sixty (60) months. *Id.* at ¶ 5. Therefore, Debtor's payments made during the first four (4) months of the Amended Plan will be prorated and the subsequent payments in the following fifty-six (56) months will be increased proportionately. *Id.* 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 March 1, 2022. Dckt. 88. Trustee opposes confirmation of the Plan on the basis that:

A. The proposed Plan is overextended as it will exceed the maximum length of sixty (60) months pursuant to 11 U.S.C. § 1322(d).

B. It is unclear if Debtor's income stated on the Supplemental Schedule I (Dckt. 52) gives an accurate picture of Debtor's monthly income.

DISCUSSION

Failure to Complete Plan Within Allotted Time

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in 89 months due to claims being filed for amounts higher than the Debtor scheduled. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Trustee references Debtor's Supplemental Schedule I filed on October 18, 2021 (Dckt. 52) and states that the Supplemental Schedule I no longer provides a Social Security Income in the amount of $4,700.00 which had been in the Debtor's original Schedule I filed on May 25, 2021 (Dckt. 19). Opposition, Dckt. 88 at 2:4-6. The court notes that Debtor's most recent Supplemental Schedule I was actually filed on January 27, 2022, the same day Debtor filed their Motion to Confirm Second Amended Plan. See Supplemental Schedule I, Dckt. 74.

Debtor's most recent Supplemental Schedule (Docket 74) Debtor's Social Security income in the amount of $5,205.90 in total. *Id.* at 4. Based on this, it appears that Debtor's Social Security income has actually increased since Debtor's previous Supplemental Schedule I filed on October 18, 2021 (Dckt. 52) which listed their Social Security income in the total amount of $4,876.00, which was also an increase from Debtor's Social Security income of $4,700.00 as listed in their original Schedule I filed on May 25, 2021 (Dckt. 19). Trustee may have overlooked the values provided next to "Social Security" under "List all other income regularly received" in Part 2 of the Supplemental Schedule I. Thus, Trustee's concerns over why Debtor's Social Security income has stopped or whether it was accidentally omitted are not at issue.

The court notes, however, that Debtor's proposed Plan is still noncompliant as it will exceed the maximum sixty (60) months allowed under 11 U.S.C. § 1322(d).

The Amended Plan 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 Amended Chapter 13 Plan filed by the

debtor, Michael Roland Stanford and Carol Ann Stanford ("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.

19.	**21-21745-E-13 FF-3**	**MICHAEL/CAROL STANFORD Gary Fraley**	**OBJECTION TO CLAIM OF AMERICAN EXPRESS, CLAIM NUMBER 5 2-8-22 [78]**

Final Ruling: No appearance at the March 15, 2022 hearing is required.

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

Sufficient Notice Not Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on February 8, 2022. By the court's calculation, 35 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).

Under the facts and circumstances of this Motion, the court shortens the time to the 35 days 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Objection to Proof of Claim Number 5-1 of American Express is sustained and the claim is disallowed in its entirety.

Michael Rolan Stanford and Carol Ann Stanford, Chapter 13 Debtor, ("Objector") requests that the court disallow the claim of American Express ("Creditor"), Proof of Claim No. 5-1 ("Claim"),

Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $41,946.34. Objector asserts that the final payment was made in July 2010 and a total of ten years and nine months have elapsed since the final payment made by Objector.

TRUSTEE'S NON-OPPOSITION

On March 1, 2022, David Cusick, Chapter 13 Trustee, filed a Non-Opposition to Debtor's Objection to Claim 5. Dckt. 91. Trustee states he does not oppose Debtor's objection and respectfully requests the court to sustain Debtor's objection.

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.

Once a party has objected to a proof of claim, the creditor asserting the claim may not withdraw the claim except on order of the court. FED. R. BANKR. P. 3006.

California Civil Procedure § 337(a) states:

> Within four years, an action upon any contract, obligation or liability founded upon an instrument in writing.

According to the Creditor's Proof of Claim, the "Last Payment Date," was July 2010. Claim 5-1, p. 6. Four years from July 2010, would be July 2014. Creditor filed their Proof of Claim on June 11, 2021. This is roughly seven (7) years and one month since the four year period pursuant to California Civil Procedure 337(a). Therefore, Creditor's Proof of Claim is late.

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

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 American Express ("Creditor"), filed in this case by Michael Rolan Stanford and Carol Ann Stanford, 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 5-1 of Creditor is sustained, and the claim is disallowed in its entirety

Attorney's fees and costs, if any, shall be requested as provided by Federal Rule of Civil Procedure 54 and Federal Rules of Bankruptcy Procedure 7054 and 9014.

20.	**21-23545-E-13** **DPC-1**	**FRANK/NICOLE ROGERS** **Catherine King**	**CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **11-22-21 [15]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on November 21, 2021. By the court's calculation, 23 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 failed to appear at the First Meeting of Creditors.

B. Debtor failed to provide payment advices and Federal Income Tax Return.

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 was held on December 9, 2021, and Trustee's Report indicates Debtor appeared. Trustee has filed nothing further, and the court therefore determines that Debtor's appearance has resolved this Objection.

Combined 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).

At the hearing, the Debtor reported that all of the shortcomings have been cured, except one debtor did not have a Social Security Card.

The Trustee reported that pay advices are missing, with only one having been filed.

At the hearing, the Trustee agreed to a continuance to allow Debtor to address the shortcomings.

Trustee's Status Report

On January 25, 2022, Trustee filed a status report stating:

1. Debtors have not provided sixty (60) days of pre-petition advices.

2. Attorney appeared at the continued meeting of creditors on January 20, 2022, however, Debtor Frank Anthony Rogers has not provided verification of his social security number to the Trustee.

The Trustee reported that the hearing has been continued, with some payment advices to be provide, and the hearing should be continued in light of Debtor's prosecution of the case.

March 15, 2022 Hearing

At the hearing xxxxxxxxxxxxxxxxx

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 xxxxx.

21. **19-22158-E-13 TAM-2** **MICHAEL PETKUS** **Thomas Moore** **MOTION TO VACATE DISMISSAL OF CASE** **2-4-22 [138]**

DEBTOR DISMISSED: 01/10/2022

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 has not been provided by the Debtor. Debtor did not provide a Certificate/Proof of Service with the Motion to Vacate. The only Certificate/Proof of Service reflected on the court's docket is a Certificate/Proof of Service filed February 4, 2022. Dckt. 141. This Certificate/Proof of Service was filed on the same day as the Motion to Vacate. However, upon review of the Certificate/Proof of Service, the document provides, "On 02/04/2022, I served the within: Supplemental Declaration of Debtor in Support of Motion for Confirmation." A quick review of the court's docket shows no "Supplemental Declaration" has been filed in relation to this Motion to Vacate. Further, the subsequent motion requiring a Certificate/Proof of Service is a Motion to Vacate, not a Motion for Confirmation. The court does not know if this was merely a clerical error on counsel's part.

At the hearing xxxxxxxxxxxxxxxxxxxx

~~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, 2022. By the court's calculation, 39 days' notice was provided. 14 days' notice is required.~~

~~The Motion to Vacate 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 Vacate is ~~Denied~~.

Michael J. Petkus ("Debtor") filed the instant case on April 7, 2019. Dckt. 1. A plan was confirmed on December 6, 2019, and an order confirming the plan was entered on September 15, 2020. Dckt. 105 & 121.

On December 8, 2021, the Chapter 13 Trustee, David Cusick ("Trustee"), filed a Motion to Dismiss the Case due to Debtor being delinquent in plan payments. Dckt. 130. On January 5, 2022, a hearing on the Motion to Dismiss was held, and the Motion was granted. Dckt. 134. The ruling was final because Debtor did not file any opposition.

On February 4, 2022, Debtor filed this instant Motion to Vacate, claiming: (1) mistake, inadvertence, surprise, or excusable neglect; where as the debtor thought he could just pay the amount current and that would remove the motion to dismiss. (2) Newly discovered evidence the debtor was current. (5) The judgment has been satisfied and (6) any other reason that justifies relief. It is asserted that the court would not have dismissed the case, if the court had known the debtor was current on a motion to dismiss solely based upon the debtor being behind.

Debtor seeks to have the order dismissing the case vacated, per Federal Rule of Civil Procedure 60(b).

TRUSTEE'S RESPONSE

On February 22, 2022, David Cusick, Chapter 13 Trustee, filed a Response to Debtor's Motion to Vacate. Dckt. 142. Trustee states a $6,400.00 payment was posted the day of the hearing on the Motion to Dismiss, bringing the Debtor current where a $3,200.00 payment had posted on December 21, 2021, the 32nd month of the plan. Further, the Trustee refunded $6,154.32 to the Debtor by check dated January 31, 2022; this check was returned by the post office with a yellow sticker indicating it was unable to forward. Lastly, Debtor did not file any opposition to the Motion to Dismiss filed December 8, 2021, (Dckt. 138), and the court issued a final ruling in the pre-hearing disposition.

APPLICABLE LAW

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

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

FED. R. CIV. P. 60(b). A Rule 60(b) motion may not be used as a substitute for a timely appeal. *Latham v. Wells Fargo Bank, N.A.*, 987 F.2d 1199, 1203 (5th Cir. 1993). The court uses equitable principles when applying Rule 60(b). *See* 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 2857 (3d ed. 1998). The so-called catch-all provision, Federal Rule of Civil Procedure 60(b)(6), is "a grand reservoir of equitable power to do justice in a particular case." *Uni-Rty Corp. V. Guangdong Bldg., Inc.*, 571 F. App'x 62, 65 (2d Cir. 2014) (citation omitted). While the other enumerated provisions of Rule 60(b) and Rule 60(b)(6) are mutually exclusive, relief under Rule 60(b)(6) may be granted in extraordinary circumstances. *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863 & n.11 (1988).

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

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

DISCUSSION

As an initial policy matter, the finality of judgments is an important legal and social interest. The standard for determining whether a Rule 60(b)(1) motion is filed within a reasonable time is a case-by-case analysis. The analysis considers "the interest in finality, the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to other parties." *Gravatt v. Paul Revere Life Ins. Co.*, 101 F. App'x 194, 196 (9th Cir. 2004) (citations omitted); *Sallie Mae Servicing, LP v. Williams (In re Williams)*, 287 B.R. 787, 793 (B.A.P. 9th Cir. 2002) (citation omitted).

The sole ground for the Motion to Dismiss was delinquency in plan payments. As a motion under Local Bankruptcy Rule 9014-1(f)(1), Debtor and Debtor's counsel were required to oppose the Motion in writing no later than fourteen days prior to the hearing. Instead, Debtor did not file an Opposition and let the court issue a final ruling without any argument.

Unfortunately, no testimony is provided as to what mistake or other grounds would properly exist for this court vacating the prior order. The Debtor's testimony consists of:

1. I am familiar with the facts stated herein and could testify to them if called to do so.

2. I was current on the date of the hearing on the motion to dismiss.

3. I have had one other motion to dismiss filed in my case and the last time the Trustee withdrew his motion the day of the hearing.

4. I didn't file any opposition this time as the last time the Trustee simply withdrew his motion, I thought the same thing would happen again.

5. Please give me another chance, I realize I should have communicated with my attorney and filed opposition.

6. I pray the Court vacate its dismissal order on January 10, 2022.

Declaration, Dckt. 140.

No testimony is provided as to when Debtor and Debtor's counsel believed Debtor was current and no opposition was required. All Debtor states is that the was current on the date of the hearing on the Motion to Dismiss. The hearing on the Motion to Dismiss was conducted on January 5, 2022. Opposition to the Motion was required to be filed at least fourteen (14) days before the hearing, which was December 22, 2022.

The Trustee's Motion to Dismiss stated that Debtor was delinquent in plan payments in the amount of $6,400.00 as of the December 8, 2022 filing of the Motion to Dismiss (Dckt. 130).

In the Trustee's Response, he states that his records show that a $6,400.00 payment, which was refunded because the case was dismissed, was posted on January 5, 2022 - the day set for hearing on the Motion to Dismiss if an opposition was filed. Additionally, Debtor made a payment of $3,200.00 on December 21, 2021, there being a $3,200.00 due on December 25, 2021, in addition to the $6,400.00 default.

In the Motion to Vacate it is argued that the Debtor "throws himself on the mercy of the court" to vacate the dismissal. Motion, ¶ 5; Dckt. 138. Debtor's counsel states in the Motion that Federal Rule of Civil Procedure 60(b), incorporated into Federal Rule of Bankruptcy Procedure 9024, exist on the following grounds:

A. Mistake or excusable neglect. It is asserted that "[d]ebtor thought he could just pay the amount current and that would remove the motion to dismiss." *Id*., p. 3:7-10.

In this case Debtor is represented by counsel. Debtor is not prosecuting this case in pro se, in which he, a non-attorney, might believe that responding to pleadings is not necessary. No explanation is given as to why Debtor's counsel did not file an opposition, even one stating that Debtor opposes the Motion to Dismissed and will have the default cured by the time of the hearing.

Additionally, no explanation is given why, even though posted as a final ruling (which expressly states "No Appearances Required" and not that the "Matter has been Removed From the Calendar), why Debtor's counsel did not appear at the hearing, request the matter be called, and inform that court that while not filing an opposition, he has now learned the Debtor is current and request that the Trustee dismiss the Motion to Dismiss.

B. It is asserted that the fact that Debtor was current as of the hearing date is "newly discovered evidence."

The arguments advanced by counsel for the Debtor and testimony of Debtor show that this was not

"newly discovered evidence," but was evidence Debtor and Debtor's counsel had prior to the hearing.

C. It is asserted that the "judgment" has been satisfied and that this is an "any other reason that justifies relief" grounds exist.

In this situation, there was no "judgment" (the term "judgment" including orders) to satisfy prior to the entry of the order dismissing the Bankruptcy Case. There was "only" a Motion to Dismiss.

With respect to the "any other reason that justifies relief" grounds in Federal Rule of Civil Procedure 60(b)(6), this is not a "wave of the wand, anything goes" basis for granting relief. As discussed in Moore's Federal Practice:

> a. However, this "catch-all" provision does not really provide a court with unfettered discretion to set aside a judgment in all cases. Despite the broad power inherent in the provision, it is interpreted literally:
>
> 1.The provision applies only when there are reasons for relief other than those set out in the more specific clauses of Rule 60(b) (see [2], below). To read the provision any other way would eliminate the need for the specific provisions and would eliminate the limitations that are imposed on those specific provisions (see §§ 60.41 –60.47).
>
> 2.There must always be a valid reason justifying relief from a judgment. In fact, the courts always require that there be "extraordinary circumstances" justifying relief (see [3], below). To read the provisions otherwise would permit the discretion vested in a court by Rule 60(b) to be used to make unnecessary inroads into judgments that would otherwise be final, or to transform Rule 60(b) into a substitute for appeals (see § 60.22[2]).

12 Moore's Federal Practice - Civil § 60.48 [a] (2021). Moore's continues in discussing the necessary "extraordinary circumstances" for granting relief pursuant to Federal Rule of Civil Procedure 60(b), stating:

> [b] "Extraordinary Circumstances" Usually Means Lack of Fault by Movant
>
> The main distinction between *Klapprott* and *Ackermann* is that Mr. Klapprott was a victim of circumstances while Mr. Ackermann was largely at fault for his predicament (see [a], above). The cases seem to make that fault/no fault distinction the controlling factor in determining whether extraordinary circumstances will be found or not. In a vast majority of the cases finding that extraordinary circumstances do exist so as to justify relief, the movant is completely without fault for his or her predicament; that is, the movant was almost unable to have taken any steps that would have resulted in preventing the judgment from which relief is sought. For example:

Id.. § 60.48[b] (2021). Here, Debtor and Debtor's counsel knew the Motion to Dismiss had been filed, knew that they to file an opposition to the Motion to Dismiss would be granted and the case dismissed - that being provided in the Local Bankruptcy Rules and in the Notice of Hearing on the Motion that was

served on Debtor and Debtor's counsel. [Fn.1.]

FN. 1. The Notice of Hearing which was served on Debtor and Debtor's counsel with the Motion to Dismiss and supporting pleadings clearly states:

> **YOU HAVE UNTIL December 22, 2021 TO FILE A WRITTEN RESPONSE OR OPPOSITION TO THIS MOTION.**
>
> Even if you believe the issues brought up in the Motion to Dismiss have been resolved, do not assume the Court or Trustee knows this. You should still file a response or opposition stating why you believe the issues have been resolved.
>
> If you do not file a timely written response or opposition with the Court to this motion, the Court may resolve this matter without oral argument, AND YOU MAY NOT BE ALLOWED A HEARING. Any opposition must be accompanied with evidence to support any factual allegations.
> . . .
>
> IF YOU DO NOT WANT THIS CASE DISMISSED, you must file a written opposition and appear at the hearing unless the Court removes the matter without oral argument.
>
> **WRITTEN OPPOSITION TO THIS MOTION IS REQUIRED**. If written opposition is filed, it should be served and filed with the Clerk by the responding party not less than fourteen (14) calendar days preceding the date of this hearing. If you fail to file an opposition, the Court may not allow oral argument at the scheduled hearing. Copies of any response or opposition should also be served to the Chapter 13 Trustee at this address: . . . .

Notice of Hearing, Dckt. 131 (emphasis in original).

The Motion further states that the Trustee has informed counsel that the Trustee does not intend to oppose the Motion to Vacate.

Unfortunately, the Motion and supporting Declaration clearly state that Debtor and Debtor's counsel were aware of the Motion to Dismiss, that Debtor and Debtor's counsel received notice of the Motion to Dismiss, and the court concludes therefore that Debtor and Debtor's counsel were given Notice that an opposition was required, in addition to Debtor's counsel knowing the Local Bankruptcy Rules which state that an opposition is required.

Here, it appears that Debtor and Debtor's attorney, knowing that an opposition was required chose to "gamble" and save the cost of an opposition or the cost of appearing telephonically on the hearing date to correct the court's posted final (No Appearance Required) ruling stating that Debtor has chosen not to oppose the Motion to Dismiss.

While it is sad that Debtor, who is halfway through his Chapter 13 Plan, made the strategy decision with his counsel to not oppose the Motion to Dismiss and hope the court does not follow the Local Bankruptcy Rules. This was not a mistake, this was not a surprise, and this clearly was not "newly discovered evidence" Fn.2.

FN. 2. In arguing that the knowledge that Debtor intended to make the cure payment or had made the cure payment as of the hearing date is not newly discovered evidence to Debtor or Debtor's counsel. They both knew of this evidence. Rather, they chose not to present it to the court, keeping it secret unto themselves. That a party chooses not to present evidence, but when they lose try to present it to the court so that it is "newly discovered" by the court is not a proper application of Federal Rule of Civil Procedure 60(b)(2).

> [a] Evidence Is "Discovered" Only If Unknown or Unavailable at Time of Trial
>
> Newly discovered evidence refers only to evidence that was not "discovered" by the moving party in time to move for a new trial. Apart from the question whether the moving party exercised sufficient diligence to discover the evidence in time for trial or for a new-trial motion (see [5], below), "**newly discovered evidence" for this purpose includes evidence that was unknown to the moving party at the time of trial.** In addition, evidence that was lost, hidden, or unavailable during trial could qualify as "newly discovered evidence" when later found, even if the evidence was known to the moving party at the time of trial. However, **"newly discovered evidence" does not include evidence that was known and available during trial but was not offered by the moving party as the result of a tactical decision**.
>
> The most obvious example of a lack of discovery involves the quite typical case in which the party who loses at trial claims that he or she wants to present a "new" witness. **The losing party cannot meet the "discovery" requirement when, as is all too frequent, the party knew of the existence of the witness, and the substance of the witness' testimony, but thought that the witness was not needed until the case was lost**.
>
> [b] Party May Not "Discover" Evidence Already in its Possession
>
> When a party has anything that could legally be called possession of evidence during a trial, the party does not "discover" that evidence at a later time. . . .

12 Moore's Federal Practice - Civil § 60.42 (2021) (emphasis added).

Therefore, in light of the foregoing, the Motion is ~~Denied~~, and the order on the Motion to Dismiss (Dckt. 135) is ~~not vacated~~.

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 Vacate filed by Michael J. Petkus ("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 th~~e Motion is denied, and order on the Motion to Dismiss (Dckt. 135) is not vacated.~~

22. 19-27861-E-13 SLH-3 | **EUGENIA RAKESTRAW** | **Seth Hanson** | **MOTION TO MODIFY PLAN** | **1-24-22 [70]**

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 21, 2022. By the court's calculation, 53 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.

The debtor, Eugenia Ann Rakestraw ("Debtor") seeks confirmation of the Modified Plan because the filed claims exceed the claims scheduled by $93,681.16 and to adjust for changes in her income and expenses. Declaration, Dckt. 72. The Modified Plan provides Plan payments for months one through twenty-four (24) shall total $31,625.00 and Plan payments for months twenty-five (25) through sixty (60) will be $530.00. Modified Plan, Dckt. 66. Further, Debtor shall maintain payments directly

on her student loans as follows: Navient (account ending 8993-1) in the monthly amount of $672.08. *Id*. Lastly, Debtor will pay a 25 percent dividend to unsecured claims totaling $165,458.16. Dckt. 73, Exhibit C. 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 March 1, 2022. Dckt. 83. Trustee opposes confirmation of the Plan on the basis that:

A. The court reviewed the Motion and Declaration of the proposed modified Plan in its review of the Trustee's Motion to Dismiss, which was heard February 9, 2022. The court noted the Motion did not plead with particularity the grounds upon relief may be granted and the Declaration (Dckt. 72) did not appear to reflect that the Debtor was aware of the terms of the proposed modified Plan. The court's Civil Minute Order filed February 11, 2022, Dckt. 79, continued the Trustee's Motion to Dismiss from February 9, 2022, to March 15, 2022, to be heard in conjunction with the instant Motion. Debtor was to file and serve a supplement to the Motion and any supporting pleadings by February 23, 2022.

B. Debtor is paid under the proposed modified Plan by $315.00. Section 7.03 of the modified Plan proposes plan payments of $31,625.00 total paid in through month 24, then $530.00 for months 25 through 60. February is month 26, so Debtor would have needed to pay into the Plan through month 26 a total of $32,685.00, but has actually paid to date a total of $33,000.00 with the last payment having posted on January 24, 2022, in the amount of $1,375.00. No payment for February has posted to date.

C. Debtor's Supplemental Schedule I no longer includes retirement loan payments. Debtor's Schedule I included $345.40 per month in required repayments of retirement fund loans. Dckt. 1, page 30. Debtor's Schedule K stated Debtor had two retirement loans. Dckt. 1; page 33, #24. Loan #1 was being paid $123.04 per month and would be paid off in October 2021 and Loan #2 was being paid $222.36 per month and would not be paid off until December 2022. Debtor's Supplemental I no longer includes retirement loan payments and no explanation for the omission has been provided.

DEBTOR'S RESPONSE

On March 7, 2022, Debtor filed a response addressing Trustee's concerns regarding the payments and Supplemental Schedules. Dckt. 86. Additionally, Debtor states if their motion is granted, their attorney will submit an order confirming that includes the language requested by the trustee stating "the total amount paid in through month 25 (January 2022) is $33,000.00, with payments beginning in February 2022 of $530.00 for the remaining 35 months of the Plan."

DISCUSSION

PARTICULARITY/SUPPLEMENTAL PLEADINGS

Pursuant to the courts Order on February 11, 2022, Dckt. 79, Debtor was order to file and serve supplemental pleadings on or before February 23, 2022. Debtor filed and served with the court a Supplemental Motion and Supplemental Declaration on February 17, 2022. Dckt. 80 & 81. Upon review of the Supplemental Motion and Supplemental Declaration, it appears Debtor has met the particularity requirements of Federal Rule of Bankruptcy Procedure 9013.

PAID AHEAD

The Trustee would have no opposition if the Order Confirming provided language indicating the total amount paid in through month 25 (January 2022) is $33,000.00, with payments beginning in February 2022, of $530.00 for the remaining 35 moths of the Plan.

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). Debtor's Supplemental I no longer includes retirement loan payments and no explanation for the omission has been provided. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Debtor's response appears to resolve trustee's concerns. At the hearing, XXXXXXXXXX

~~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, Eugenia Ann Rakestraw ("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 21, 2022, 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~~.

23. **19-27861-E-13 DPC-1 23 thru 24** | **EUGENIA RAKESTRAW Seth Hanson** | **CONTINUED MOTION TO DISMISS CASE 1-12-22 [62]**

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—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 12, 2022. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss is xxxxx.

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

1. The debtor, Eugenia Ann Rakestraw ("Debtor"), is delinquent $1,375.00 in Plan payments. Debtor's monthly payment is $1,375.00, prior to hearing another payment of $1,375.00 will come due. As a result Debtor will need to pay $2,750.00 in order to bring this Plan current by the hearing date.

2. According to the Trustee's calculations Debtor's Plan will complete in 129 months as opposed to 60 months pursuant to the confirmed Plan.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on January 25, 2022. Dckt. 75. Debtor states she sent a payment via cashier's check on January 21, 2022 in the amount of $1,375.00. Further, Debtor has corrected the over extension of her Plan by filing a Modified Plan, (Dckt. 66), to reduce the percentage paid to unsecured creditors from 100% to 25% to complete the terms of her plan within 60 months.

FILING OF MODIFIED PLAN

Debtor filed a Modified Plan and Motion to Confirm on January 21, 2022. Dckt. 66. The

court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 70, 72.

The Motion (Dckt. 70) states the reason for the default in the prior plan and the treatment of unsecured claims (reduction from 100% to 25% dividend, and payment of student loans outside the plan. However, grounds are not stated with particularity upon which the requested relief, confirmation of a modified plan, may be granted. The "grounds" stated in the Motion are the legal conclusion that the modified plan meets the requirements of 11 U.S.C. §§ 1322(a) -(c) and 1325. Motion, ¶ 9; Dckt. 70. These are not grounds, but "mere" legal conclusions. Additional, confirmation of a modified plan is governed by 11 U.S.C. § 1329, which incorporates multiple provisions (some inconsistent) of 11 U.S.C. §§ 1325 and 1322.

In Debtor's Declaration (Dckt. 72), Debtor appears to not be aware of the Modified Plan terms. This lack of knowledge is shown by being unaware of how creditors with secured claim are provided for in the Plan, stating that:

> 2. All secured creditors provided for have either accepted the Plan, or I have agreed to surrender the property securing their claims, or the Plan provides to pay the creditors pursuant to section 1324(a)(5)(B).

Declaration, ¶ 2

The court continues the hearing to afford Debtor the opportunity to file a supplemental pleading to the Motion (not an amended motion) stating the grounds with particularity and supporting pleadings relating thereto.

March 15, 2022 Hearing

> At the hearing xxxxxxxxxxxxxxxx

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 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 Motion to Dismiss is xxxxx.

24. **21-23261-E-13** **FLORA BROUGHTON** **MOTION TO CONFIRM PLAN**
PGM-2 **Peter Macaluso** **2-3-22 [52]**

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 3, 2022. 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 Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

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

The debtor, Flora Elaine Broughton ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for Plan payments of $8,220.00 per month will commence March 25, 2022 for 55 months. Balance on hand as of February 2, 2022 is $6,252.36, Trustee is to disburse an on-going mortgage payments to Class 1 creditor PHH for February 2022. Class 1 Mortgage lender, PHH was paid directly post-petition, for October, November, December and January 2022. Class 2 Creditor, Franklin/Bosco - line of creditor mature June 2021, 180 months from May 2006. Amended Plan, Dckt. 56. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S NON-OPPOSITION

On February 22, 2022, David Cusick, Chapter 13 Trustee, filed a Non-Opposition to Debtor's Motion to Confirm Amended Plan. Dckt. 63.

CREDITOR'S OPPOSITION

Bosco Credit LLC ("Creditor") holding a secured claim filed an Opposition on February 25, 2022. Dckt. 66. Creditor opposes confirmation of the Plan on the basis that:

A. Creditor holds a lien on the Debtor's principal residence. Debtor cannot modify Creditor's lien pursuant to § 1322(b)(2). Further, Debtor is attempting to utilize the exception of § 1322(c)(2) by classifying the claim as a matured loan. Debtor states the loan is set to mature in June 2021, however, this is incorrect as the loan is set to mature in June 20, 2031. Additionally, Debtor proposes a 3.00% interest rate rather than the 12.750% currently existing.

B. The proposed Plan does not set forth a reasonable schedule and time period for the payment of the arrearages owed to Secured Creditor.

C. While Debtor's amended Schedule I reflects a monthly income of $10,721.71, half of that is from family contribution. Feasibility concerns aside, Debtor must provide for both repayment fo the arrearages together with the correct ongoing monthly payment amount as follows: $184,721.16 divided by 60 months = $3,078.68 plus the current monthly payment of $2,321.69 for total monthly amount of $5,400.37.

Debtor's Reply

On March 7, 2022, Debtor filed a reply stating:

1. Creditor is properly classified as class 2 because of the "publication" on October 7, 2021 and charges of $1,514.00. Dckt. 68. The Notice of Sale being published calls for the acceleration of the terms which result in the allowance of a class 2 claim despite the regular note expiration on June 30, 2031.

2. Debtor is requesting a loan modification and does not oppose this Motion be continued to allow the processing of a loan modification.

Dckt. 68.

DISCUSSION

Modification of an Obligation Secured Only by Principal Residence

Creditor argues that Debtor's Plan was not filed in good faith and is an improper modification of a claim secured only by a security interest in real property that is Debtor's principal residence. Creditor has filed a Proof of Claim stating a secured claim in the amount of $255,340.79, secured by a second priority deed of trust against the property commonly known as 5505 Jilson Way, Elk Grove, CA 95757. Debtor's Schedules indicate that this is Debtor's primary residence.

In the Reply to the Objection, Debtor states that "Based on the 'publication' . . .the Notice of Sale being published calls for the acceleration of the terms which results in the allowance of a class 2 claim. . ." The court adding to this short reply and first cites to the anti-modification provision of 11 U.S.C. § 1322(b)(2) which states that a plan may:

> (2) modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims; . . .

Then in 11 U.S.C. § 1322(c)(2) [emphasis added] what had been given the creditor of a claim secured by a principal residence in 11 U.S.C. § 1322(b)(2) is whittled back by Congress, which provision states:

> (c) Notwithstanding subsection (b)(2) and applicable nonbankruptcy law—
>
> (1) a default with respect to, or that gave rise to, a lien on the debtor's principal residence may be cured under paragraph (3) or (5) of subsection (b) until such residence is sold at a foreclosure sale that is conducted in accordance with applicable nonbankruptcy law; and
>
> (2) in a case in which the **last payment on the original payment schedule for a claim** secured only by a security interest in real property that is the **debtor's principal residence** is **due before the date on which the final payment under the plan is due,** the plan may provide for the payment of the claim as modified pursuant to section 1325(a)(5) of this title. . . .

Congress provides in 11 U.S.C. § 1325(a)(5)(B)(ii) that the Plan may provide for treatment of the secured claim by payment of "[t]he value, as of the effective date of the plan, of property to be distributed under the plan on account of such claim is not less than the allowed amount of such claim; . . . ."

Here, the Plan clearly provides for the payment of Creditor's secured claim, in full, over the 60 months of the Plan. In the Reply, Debtor makes reference to a Notice of Sale being published on October 7, 2021. Reply ¶ 1; Dckt. 68. Reference is made to a charge for that by Creditor. In the October 21, 2021 filed Notice of Postpetition Mortgage Fees, Expenses, and Charges for Proof fo Claim 4-1 filed by Creditor, it states a "Publication " cost incurred on October 7, 2021 in the amount of $1,514.00.

This October 7, 2021 "Publication" occurred post-petition. Since this was post-petition, it had to be to continue some pre-petition set date and not to take action against the Debtor or property of the Bankruptcy Estate in this case. 11 U.S.C. § 362(a). On the Attachment to Creditor's Proof of Claim 4-1, there is a $225.00 posting cost and $98.00 recording cost incurred August 12, 2021. POC 4-1, p. 11. If this is for recording a Notice of Default under California law, then the ninety (90) days of the Notice would expire on or about November 12, 2021.

California law provides in California Civil Code § 2924(e) that the default in an obligation secured by a deed of trust may be cured at "[a]ny time within the period commencing with the date of recordation of the notice of default until five business days prior to the date of sale set forth in the initial recorded notice of sale." Thus, the assertion is that since the Notice of Default was given by Creditor, then a foreclosure sale date set and no cure having been made prior to five days before the initial notice of sale date, then Creditors claim is an obligation that was due in full on filing and is one that is due in full prior to the expiration of the sixty (60) month Plan term.

At the hearing, **xxxxxxx**

This proposed Class 2 payment in full of the secured claim of Creditor due in full prior to the completion of the Plan term does not violate 11 U.S.C. § 1322(b)(2).

Interest Rate

Creditor objects to the confirmation of the Plan on the basis that the Plan calls for adjusting the interest rate on its loan with Debtor to 3.00%. Creditor's claim is secured by a second priority deed of trust on the subject property commonly known as 5505 Jilson Way, Elk Grove, CA 95757.

Creditor does not state would be the correct interest rate under applicable law. Rather, Creditor demands that it be paid a 12.75% interest rate. Also, nothing in the pleadings indicate how and why such a high interest rate (at least in the 21st Century) is reasonable.

The Supreme Court has provided guidance (as in controlling law) concerning the computation of adequate interest rates under bankruptcy plan in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). In *Till*, a plurality of the Court supported the "formula approach" for fixing post-petition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the formula approach. *See In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); *see also Bank of Montreal v. Official Comm. of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had a preference for the formula approach. *See Cachu*, 321 B.R. at 719 (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)).

The current "prime rate" is 3.25%. [Fn.1.] On Schedule A/B Debtor lists the Jilson Way property as having a value of $960,000, after subtracting 8% for costs of sale. Adding that back in (the value is not a net, but actual value of the property, not sales proceeds) the value of the property appears to be approximately $1,040,000.

FN. 1. https://www.bankrate.com/rates/interest-rates/prime-rate/,
https://www.wsj.com/market-data/bonds/moneyrates

Amended Proof of Claim 6-2 filed by Deutsche Bank National Trust Company, as Trustee, asserts a senior secured claim in the amount of ($541,426.36). Creditor then asserts in Proof of Claim 4-1 having a secured claim of ($255,340.79). This leaves an equity cushion of approximately $243,234. While Creditor is stuck in a second lien position, Creditors has a six figure equity cushion. It appears that there is little risk of Creditor not being paid, either during this Plan or from a foreclosure sale on the Property.

Starting the 3.25% prime rate, in light of the ($541,426.36) claim by the senior lien and also considering the substantial monthly payment required under the Plan (see computation below), the court makes a 0.5% upward adjustment in the interest rate to 3.75%, as being necessary for confirmation of the proposed Plan.

Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts $184,721.16 in pre-petition arrearages.

However, under the plain reading of 11 U.S.C. § 1322(b)(5) and (c), and § 1325(a), there does not need to be a "cure" of arrearages, but payment of Creditor's claim in full.

Additionally, if there was a pre-petition cure amount to be provided for in the Plan, it would be based on the amount stated in the Proof of Claim, not the Plan, and the question being what is the correctly computed amount and whether payment of such is feasible. See First Amd Plan, ¶ 3.02; Dckt. 56.

Computation of Payment of Creditor's Claim
Over Sixty (60) Month Term of Plan

Using Creditor's Proof of Claim, the claim to be paid as of the commencement of this case is $255,340.79. POC 4-1. This is the same as stated in the Opposition to Confirmation. Opp, p. 1:28 - 2:2; Dckt. 66.

Amortizing $255,340.79 over sixty (60) months with an interest rate of 3.75% requires Creditor to be paid ($4,673.74) a month. (Computed using the Microsoft Excel Mortgage Calculator program.)

The First Amended Plan for total payments of $17,292.13 having been made through February 2022, and that the monthly Plan payment will be $8,220.00 for the remaining fifty-five (55) months of the Plan. As drafted, other than for Creditor, the Plan requires the following payments (rounded up to the higher full cent):

1. Debtor Counsel ($2,500/60 months).....($ 42)
2. Chapter 13 Trustee Fees.....($ 822)
3. Class 2 Car Payment.....($ 215)
4. Class 1 Current Mortgage and Cure.....($2,496)
5. Priority ($6,535.94/60).....($ 109)

==========

Total Payments Other than Creditor.....($3,684)

Creditor's monthly payment amount is ($4,674), creating a total amount (when amortized over sixty (60) months) necessary plan payment of $8,358.

Doing a "backdoor calculation," Debtor has funded the Plan with a payment of $17,292.13 for the first five months of the Plan, and then over the next fifty-five months will fund it with an additional $452,100, for total Plan funding of $469,392.13.

With monthly plan payments of $8,358 required, when multiplied by sixty months, then the total Plan funding needs to be $501,480. Thus, it appears that Debtor is around $50,000 short in the Plan funding.

At the hearing, **XXXXXXX**

~~The Amended 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 Amended Chapter 13 Plan filed by the debtor, Flora Elaine Broughton ("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~~.

25. **21-24161-E-13 BLG-2** | **MANUEL SAUCEDO GONZALEZ AND REGINA SAUCEDO** **Chad Johnson** | **MOTION TO CONFIRM PLAN 1-25-22 [22]**

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 25, 2022. By the court's calculation, 49 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).

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

The debtor, Manuel Saucedo Gonzalez and Regina Rodriguez Saucedo ("Debtor") seek confirmation of the Chapter 13 Plan. The Plan provides to make monthly Plan payments of $5,312.00 for 60 months, with unsecured claims receiving a 100% dividend with an approximate total amount of $1,211.00. Plan, Dckt. 21. 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 16, 2022. Dckt. 32. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor failed to appear at the First Meeting of Creditors held on February 3, 2022. The Meeting was continued to March 3, 2022 at 1:00 p.m.

B. Debtor is delinquent $5,275.84 in plan payments and the next scheduled payment of $5,275.84 is due on February 25, 2022. Debtor has paid $0.00 into the plan to date.

C. The proposed plan provides for treatment of Penny Mac Loan Services in Class 1. Due to the failure of Debtor to make plan payments timely under the terms of the plan, the Trustee lacked sufficient funds to pay the post-petition contract installments to Penny Mac Loan Services for the month of January 2022. The proposed plan fails to specify a cure of the post-petition arrearage including a specific post-petition arrearage amount, interest rate, and monthly dividend.

DISCUSSION

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 the Chapter 13 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).

Delinquency

The Chapter 13 Trustee asserts that Debtor is $5,275.84 delinquent in plan payments, which represents one month of the $5,275.84 plan payment. 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).

Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The proposed plan fails to specify a cure of the post-petition arrearage including a specific post-petition arrearage amount, interest rate, and monthly dividend. 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, Manuel Saucedo Gonzalez and Regina Rodriguez Saucedo ("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.

26. **21-24161-E-13 DPC-2** **MANUEL SAUCEDO GONZALEZ /REGINA SAUCEDO** **CONTINUED MOTION TO DISMISS CASE**
2-14-22 [28]

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 Debtor, Debtor's Attorney, and Office of the United States Trustee on February 14, 2022. By the court's calculation, 24 days' notice was provided. 14 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 xxxxxxxxxxxxxxxxxxxx

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

1. the debtor, Manuel S. Gonzalez and Regina R. Saucedo ("Debtor"), is delinquent in plan payments.

DISCUSSION

No Plan Payments Made / Failed to Commence Plan Payments

Debtor did not commence making plan payments and is $5,275.84 delinquent in plan

payments, which represents one month of the $5,275.84 plan payment. Before the hearing, another plan payment will be due. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. Debtor did not present any opposition to the Motion.

Debtor has set the hearing on the Motion to Confirm the Chapter 13 Plan for March 15, 2022. The court continues the hearing to that date to consider the dismissal of the case in light of whether Debtor is able to confirm the Plan.

March 15, 2022 Hearing

At the hearing, XXXXXXXXXX

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 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 Motion to Dismiss is xxxxxxxxxxxxxx

27. **20-23172-E-13 PGM-2** **SONDA CHARLTON** **Peter Macaluso** **MOTION TO MODIFY PLAN** **1-31-22 [63]**

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 31, 2022. By the court's calculation, 43 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.

The debtor, Sonda L. Carlton ("Debtor") seeks confirmation of the Modified Plan because her living expenses have increased and had a temporary reduction in her income. Declaration, Dckt. 65. The Modified Plan provides Plan payments of $1,785.00 per month will commence February 25, 2022 for 41 months. Modified Plan, Dckt. 67. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CREDITOR'S OPPOSITION

U.S. Bank Trust National Association ("Creditor") holding a secured claim filed an Opposition on March 1, 2022. Dckt. 73. Creditor opposes confirmation of the Plan on the basis that:

A. Creditor holds a lien on Debtor's principal residence and pursuant to § 1322(b)(2) Debtor cannot modify Creditor's lien. Creditor does not object to the Debtor's inclusion of the post-petition arrearage. However, the plan as proposed understates the amount by one payment. Debtor must repay the $3,453.14 in existing post-petition arrearage in addition

to both the remaining pre-petition arrearage and ongoing monthly payments.

CHAPTER 13 TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee"),filed a Response on March 1, 2022. Dckt. 75. Trustee states Debtor is current under th proposed plan which appears feasible and Debtor has addressed the circumstances causing the modification. However, Class 1 identifies the two post-petition payments being for May and August 2021, but Trustee's records reflect the missed months to be September and November 2021. The Trustee would have no opposition if this were clarified in the order confirming.

DEBTOR'S REPLY

On March 7, 2022, Debtor filed a Reply to Trustee and Creditor's Opposition to Motion to Modify. Dckt. 78. Debtor agrees that the fifteen payments have been accounted for in the Trustee's Payment History for this claim, and that September and November 2021, were the two months missed. Debtor agrees this should be clarified in the Order and the Order should read, "The Class 1 post-petition arrears for NewRez/Shellpoint are for September 2021 and November 2021."

DISCUSSION

The Modified Plan, as amended to provide for the two post-petition arrearages, in addition to curing pre-petition arrearages, addresses the opposition.

The Modified Plan 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, Sonda L. Carlton ("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 31, 2022, as amended to provide that the Class 1 post-petition arrears for NewRez/Shellpoint are for September 2021 and November 2021, is confirmed. Debtor's Counsel shall prepare an appropriate order, which stated the forgoing amendments, 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.

28. **19-24875-E-13** **TIMOTHY/ROSA WEST** **MOTION TO MODIFY PLAN**
SLE-4 **Steele Lanphier** **2-8-22 [82]**
28 thru 29

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 February 8, 2022. 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, Timothy A. West and Rosa Meria West ("Debtor") seeks confirmation of the Modified Plan because Debtor has experienced an increased income and receives income on a more consistent basis. Declaration, Dckt. 84. The Modified Plan provides Plan shall be considered current with $32,900.00 pain in through January 2022, Plan payments shall thereafter be $2,400.00 per month until Plan completion, and a 0 percent dividend to unsecured claims totaling $76,508.45. Additionally, Debtor's Attorney has been paid $2,000.00 through the plan and $2,000.00 prior to filing the Chapter 13 petition, for a total of $4,000.00, pursuant to the Court's "no-look" policy under Local Bankruptcy Rule 2016-1(c). Debtor's Attorney is requesting additional attorney's fees in this case which, if granted, will be paid from the herein Plan. Modified Plan, Dckt. 85. 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 March 1, 2022. Dckt. 95. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor filed a Motion for Additional Attorney's Fees to be paid through the Plan on February 11, 2022. Dckt. 89. This Additional Attorney's Fees motion is set to be heard in conjunction with this Motion. The Motion for Additional Fees requests the court to grant additional fees in the amount of $7,173.00. The Trustee calculates Debtor's Plan will not be feasible including the additional fees and will take approximately 65 months to complete.

B. Debtor's Supplemental Schedule I (Dckt. 86) now includes a monthly parent contribution to the family of $1,000.00. No Declaration from the parents has been filed to indicate whether they are aware and willing to make this monthly contribution, if they have the ability to make the contribution, or, if they do, for how long.

DISCUSSION

Failure to Complete Plan Within Allotted Time

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in 65 months due to Debtor requesting additional fees in the amount of $7,173.00. Debtor proposes to pay a total of $74,400.00 over the remaining 31 months of the Plan, but $75,522.08 is needed when the additional fees are included. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

The shortfall in projected amounts is very modest, around $1,100 and can be fixed going forward. At the hearing, **xxxxxxx**

Unexplained Increase in Income

The Chapter 13 Trustee argues that the Plan is not feasible according to 11 U.S.C. § 1325(a)(6) because Debtor has failed to provide a Declaration from the parents to indicate whether they are aware and willing to make this monthly contribution, if they have the ability to make the contribution, or, if they do, for how long.

Debtor's Amended Schedule I reflects an increase in average monthly income of $1,000.00. Absent explanation from Debtor as to how the proposed increase in income, it is hard for the the court to conclude that Debtor's projection is in good faith. That is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(3).

However, the court recognizes that there are some unique circumstances surrounding Debtor and counsel which mitigate that in this case and in light of those unique circumstances to overlook these shortcomings.

The Modified Plan does comply 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, Timothy A. West and Rosa Meria West ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Modified Plan is granted, and the proposed Modified Chapter 13 Plan filed on February 8, 2022, 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.

29. 19-24875-E-13 SLE-5 — TIMOTHY/ROSA WEST — Steele Lanphier — MOTION FOR COMPENSATION FOR STEELE LANPHIER, DEBTORS ATTORNEY(S) — 2-11-22 [89]

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 February 11, 2022. By the court's calculation, 32 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 ~~denied, without prejudice.~~

Steele Lanphier, the Attorney ("Applicant") for Timothy A. West and Rosa Meria West, 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 16, 2020, through February 11, 2022. Applicant requests fees in the amount of $7,055.00 and costs in the amount of $118.00.

TRUSTEE'S OPPOSITION

On March 1, 2022, David Cusick, Chapter 13 Trustee, filed an Opposition to Debtor's Attorney's Motion for Additional Attorney's Fees. Dckt. 98. Trustee states of the $7,173.00 fees requested an additional 1.5 hours for anticipated future work related to this motion and accompanying Motion to Confirm Modified Plan (dckt. 89, p. 2, footnote 2).

Further, Trustee notes that anticipated services listed in Billing Analysis in the amount of $525.00 are not dated (Dckt. 91; Exhibit A, p. 4). However, referenced services performed for this motion (Dckt. 89) and the Motion to Confirm Modified Plan (Dckt.82) are both set for March 15, 2022. If the court resolves the matters and takes them off of the calendar and no hearing is held, then this amount should be adjusted to reflect that.

Additionally, the Trustee calculates that the requested fees of $7,173.00 would take approximately 38 months to be paid in full, which would not be within the life of Debtor's 60 month plan. The Debtor is currently in month 30 of a 60 month plan.

Lastly, the Chapter 13 Plan was confirmed on April 10, 2020, and Debtor has filed a Motion to Confirm Modified Plan (Dckt. 82) set to be heard the same date as this motion. The Trustee notes that Debtor did not file a Declaration in support of this motion.

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 communicated with client and creditor's counsel, prepared and filed substantive motions, and appear at court hearings. 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. 18. 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 for Relief from Stay: Applicant spent 2.2 hours and Paralegal spent 3.0 hours in this category. Applicant communicated with client, prepared and filed an opposition, communicated with bank counsel on MFR, and appeared at the hearing.

Motion to Confirm Second Modified Plan: Applicant spent 4.6 hours and Paralegal spent 4.7 hours in this category. Applicant communicated with client, draft a new plan, file motion to confirm modified plan, appear at motion to dismiss hearing, and reviewed order for motion to dismiss.

Motion to Confirm Third Modified Plan: Applicant spent 4.6 hours and Paralegal spent 4.0 hours in this category. Applicant communicated and met with client, prepared and filed motion.

Motion for Fees: Applicant spent 1.9 hours and Paralegal spent 3.8 hours in this category. Applicant prepared and filed the 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**
Steele Lanphier, Attorney	13.4	$350.00	$4,690.00
Paralegal	15.5	$150.00	$2,325.00
Total Fees for Period of Application			$7,015.00

The court notes that there were typographical errors in Applicant's Motion, but upon reviewing the supporting pleadings, those errors were reconciled.

Additionally, the total additional compensation sought in the motion is $7,173.00. This number is based upon attorney's fees, paralegal fees, and costs. The actual amount of fees would be the

total compensation sought less than costs, bringing the total amount of fees to $7,055.00 ($7,173.00 - $118.00). However, upon review the actual total compensation sought is $7,133.00 ($4,690.00 + $2,325.00 + $118.00 = $7,133.00). Which means the total amount of fees is actually $7,015.00 ($7,133.00 - $118.00).

Applicant relies on the court to do associate level work and sift through seven (7) pages of exhibits. The court had to examine each page of the exhibits to decipher the actual fees incurred.

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $118.00 pursuant to this application. However, applicant fails to provide a comprehensive breakdown of expenses in their Motion and supporting documents. Applicant relies on the court to do associate level work and sift through seven (7) pages of exhibits. The court had to examine each page of the exhibits to decipher the actual expenses incurred and the category the expenses fit into.

FEES AND COSTS & EXPENSES ALLOWED

~~**Fees**~~

~~The unique facts surrounding the case, including communicated with client and creditor's counsel, prepared and filed substantive motions, and appear at court hearings, 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 $7,015.00 are 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 $118.00 are approved pursuant to 11 U.S.C. § 330 and are authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.~~

~~The court authorizes the Chapter 13 Trustee under the confirmed plan to pay 100% of the fees and costs allowed by the court.~~

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

~~Fees~~	~~$7,015.00~~
~~Costs and Expenses~~	~~$ 118.00~~

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

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

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

The Motion for Allowance of Fees and Expenses filed by Steele Lanphier ("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 Steele Lanphier is allowed the following fees and expenses as a professional of the Estate:

Steele Lanphier, Professional Employed by Lori Susan White and Joshua Michael White ("Debtor")

Fees in the amount of $7,015.00
Expenses in the amount of $118.00,

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.

30. 21-23479-E-13 PGM-1 — TRICIA ROJAS — Peter Macaluso — MOTION TO CONFIRM PLAN — 2-4-22 [73]

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

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 4, 2022. By the court's calculation, 39 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

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

The debtor, Tricia Tami Rojas ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for Debtor to pay Trustee $2,100.00 per month starting February 25, 2022, and continuing until close of sale, and then $100.00 per month until the completion of 36 months. Debtor is to request, process, and submit to the court a Sale of Property within 60 days. Class 1 claim shall receive $1,800.00 per month as a class 1 claim during the interim of the Sale of the Residence. Class 1 arrears shall be suspended, during the interim of the Sale and Debtor shall Amend/Modify the Operable Plan when the Home is Sold. Amended Plan, Dckt. 75. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CREDITOR'S OPPOSITION

Lakeview Loan Servicing, LLC ("Creditor") holding a secured claim filed an Opposition on February 28, 2022. Dckt. 87. Creditor opposes confirmation of the Plan on the basis that:

A. Debtor fails to provide for Creditor's pre-petition arrears in the Amended Plan. Debtor states the pre-petition arrears owed to Creditor is $118,000.00 and the post-petition arrears due are $7,500.00. Since the

filing of the case, Creditor has not received any post-petition payments and the total due is $11,810.00.

B. The loan related to Creditor's claim is secured by Debtor's primary residence, matures after the term of the proposed Amended Plan and requires a monthly post-petition payment of $2,952.70. The Plan improperly proposes to reduce Creditor's monthly mortgage payment from $2,952.70 to $1,800.00 per month while Debtor pursues a sale of property.

C. Debtor does not have sufficient income to make the required payments to address her secured claims because Debtor's Schedule J lists $0.00 in expenses attributed to home mortgage or rental payment and indicates that Debtor has a net disposable income of $2,100.00 to fund the Plan which includes her post-petition installments. The post-petition owed to Creditor totals $2,952.70 which fully eclipses all of Debtor's disposable income.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on March 1, 2022. Dckt. 88. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor has filed a budget with the court which show Debtor's monthly net income of $4,095.37 is from employment at Kaiser Permanente as a Medical Assistant. Debtor's Declaration states Debtor is on a fixed income, retirement, and pension. Dckt. 76. Further, the Declaration states the plan length to be 36 months but the Motion and Amended Plan state 60 months. Trustee is unclear if Debtor's situation has changed or one set of information is incorrect.

B. Debtor proposes to make plan payments of $0.00 per month for 3 months then $2,100.00 per month starting February 25, 2022, and continue until close of sale, then $100.00 per month until the completion of 36 months. Debtor fails to state what amount will be paid into the plan in connection with the sale of the property or a date of when the 60 days the Debtor is proposing to complete the sale will occur. Additionally, Debtor fails to state how she will be making payments of $0.00 for the first 3 months under the "Additional Provisions."

DEBTOR'S REPLY

On March 7, 2022, Debtor filed a Reply to Trustee's and Creditor's Opposition to Motion to Confirm Plan. Dckt. 91. Debtor intends to be current on, or before the date of this hearing and Debtor's plan intends on a sale of the home in question and has an offer. The hearing for permission to sell will be set for hearing once all documents are received from title/escrow.

DISCUSSION

Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts $130,604.58 in pre-petition arrearages. The Plan does not propose to cure those arrearages. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearages.

Modification of an Obligation Secured Only by Principal Residence

Creditor argues that Debtor's Plan was not filed in good faith and is an improper modification of a claim secured only by a security interest in real property that is Debtor's principal residence. Creditor has filed a Proof of Claim indicating a secured claim in the amount of $483,183.58, secured by a deed of trust against the property commonly known as 4132 Folsom Drive, Antioch, California. Debtor's Schedules indicate that this is Debtor's primary residence. This modification violates 11 U.S.C. § 1322(b)(2), which prohibits the modification of an obligation secured only by Debtor's residence.

Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor's Schedule J lists $0.00 in expenses attributed to home mortgage or rental payment and indicates that Debtor has a net disposable income of $2,100.00 to fund the Plan which includes her post-petition installments. The post-petition owed to Creditor totals $2,952.70 which fully eclipses all of Debtor's disposable income. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor has filed a budget with the court which show Debtor's monthly net income of $4,095.37 is from employment at Kaiser Permanente as a Medical Assistant. Debtor's Declaration states Debtor is on a fixed income, retirement, and pension. Dckt. 76. Further, the Declaration states the plan length to be 36 months but the Motion and Amended Plan state 60 months. Trustee is unclear if Debtor's situation has changed or one set of information is incorrect. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor proposes to make plan payments of $0.00 per month for 3 months then $2,100.00 per month starting February 25, 2022, and continue until close of sale, then $100.00 per month until the completion of 36 months. Debtor fails to state what amount will be paid into the plan in connection with the sale of the property or a date of when the 60 days the Debtor is proposing to complete the sale will occur. Additionally, Debtor fails to state how she will be making payments of $0.00 for the first 3 months under the "Additional Provisions." Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

The Amended 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 Amended Chapter 13 Plan filed by the debtor, Tricia Tami Rojas ("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.

31. **21-22190-E-13 JLK-1** **KENNETH SNOWDER** **James Keenan** **CONTINUED MOTION TO CONFIRM PLAN** **11-19-21 [22]**

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 November 19, 2021. By the court's calculation, 53 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).

The Motion to Confirm the Amended Plan is xxxxx.

The debtor, Kenneth Wayne Snowder ("Debtor") seeks confirmation of the Amended Plan. The Amended Plan provides for a priority claim by the IRS that was higher than debtor originally scheduled when he filed the bankruptcy. Debtor shall pay $1,500.00 a month and the priority claim shall begin on the eighth (8) month of the plan. Amended Plan, Dckt. 25. 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 December 28, 2021. Dckt. 27. Creditor opposes confirmation of the Plan on the basis that:

A. Debtor is delinquent $850.00 in Plan payments.

B. Debtor has not provided sufficient evidence of how they can increase their monthly payment by $150.00.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is $850.00 delinquent in plan payments, which represents less than one month of the $1,500.00 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 Afford Plan Payment / 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). Debtor has not amended schedules nor has he filed a declaration stating if there is any additional debt belonging to the non-filing spouse or to show how they will obtain the extra $150.00 in increased plan payments. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

At the hearing, the Trustee reported that the delinquency has been cured. With respect to the $150 a month increase, the Debtor is providing supplemental information in response to Trustee's Opposition.

Additionally, Debtor is amending the Schedules to include the non-debtor spouse's community debt and the hearing is continued to allow all the additional creditors notice of the plan and hearing to confirm.

Trustee's Status Report

On March 1, 2022, David Cusick, Chapter 13 Trustee, filed a Status Report for Debtor's Motion to Confirm. Dckt. 34. The Status Report states Debtor is delinquent $850.00 in Plan payments and has not provided any supplemental information, or filed any declaration, to provide sufficient evidence of how he can increase the Plan payment by $150.00 per month.

Additionally, Debtor has not filed any amended Schedules, which includes Debtor's non-filing spouse' community debt and any additional creditors have not received notice of the Plan or hearing to confirm. Trustee, respectfully requests the court deny confirmation, unless these matters are addressed.

March 15, 2022 Hearing

At the hearing xxxxxxxxxxxxxx

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Kenneth Wayne Snowder ("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 xxxxx.

32.	**17-26993-E-13** **SLE-3** **32 thru 33**	**JUSTIN MCCAULEY** **Steele Lanphier**	**MOTION TO MODIFY PLAN** **2-4-22 [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.

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 February 4, 2022. By the court's calculation, 39 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 and the Modified Plan is confirmed.

The debtor, Justin Ryan McCauley ("Debtor") seeks confirmation of the Modified Plan because Debtor recently purchased a home and his housing cost has increased dramatically, as such he needs to lower his Plan payments. Declaration, Dckt. 42. The Modified Plan provides the Plan shall be considered current with $61,200.00 paid in through January 2022. Payments shall thereafter be $279.00 per month until plan completion and a 28 percent dividend to unsecured claims totaling $195,956.98. Counsel for Debtor has been paid a total of $4,000.00 under the previously confirmed plan. Concurrently with filing of this new plan, Counsel is filing a motion for additional attorney's fees. If

granted, those fees will be paid through the plan to the extent available. Modified Plan, Dckt. 40. 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 March 1, 2022. Dckt. 53. Trustee opposes confirmation of the Plan on the basis that:

A. According to the Trustee's calculations, the Plan will complete in more than 60 months proposed, possibly taking 67 months, when additional attorney's fees of $3,990.00 are factored in pursuant to counsel's motion for additional fees filed on February 4, 2022. Dckt. 45.

As the court notes, there are some unique circumstances surrounding Debtor and counsel, and that the court believes that this can be addressed post-confirmation.

B. Counsel for Debtor has filed a Motion for Additional Fees, but proposes a $0.00 monthly dividend in Section 3.06. The additional provisions state that if the motion is granted, the additional fees will be paid through the plan to the extent available. Without a monthly dividend, the Trustee cannot comply with the Form Plan itself and will not be able to pay these fees a monthly dividend.

C. The modified Plan proposes to decrease the percentage to unsecured creditors from no less than 30% to no less than 28%, where the Trustee has already disbursed 28.26% to unsecured creditors. Since these funds have already been disbursed the Trustee will not get them back. Thus the Trustee requests that should the modified plan be confirmed, the Order state the unsecured creditors will receive no less than 28.26%.

While the Trustee requests that the Plan be modified to say that no less than a 28.26% dividend be paid, rather than saying no less than a 28% dividend, the court is comfortable with the Plan saying no less than 28%, concluding that the 28.6% already paid is more than the 28% minimum required. Also, the .26% is a *de minimis* distribution floor amount.

D. Debtor may not have complied with Local Bankruptcy Rule 2017-1(g) where a Change of Address has not been filed using the court-approved form. The proposed plan includes the recently purchased home located at 805 Langton Ct., Lincoln, CA, in Class 4 and Debtor budgets the new mortgage payment and increased housing costs on Supplemental Schedule J. Debtor is supposed to notify the Trustee of any change in the Debtor's address pursuant to the Order Confirming filed February 1, 2018. Dckt. 18; page 1, line 21-22.

DOCKET

The docket reflects a duplicate filing of the Trustee's Opposition. Dckt. 53-56.

DISCUSSION

Failure to Complete Plan Within Allotted Time

Debtor could be in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in 67 months due to additional attorney's fees of $3,990.00 are factored in pursuant to counsel's motion for additional fees filed on February 4, 2022. If so, the Plan would exceed the maximum sixty months allowed under 11 U.S.C. § 1322(d).

However, the Opposition does not state what the correct would need to be. Thus, this appears to be a post-confirmation dispute, and something that the Debtor could reasonably address.

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).

A. Counsel for Debtor has filed a Motion for Additional Fees, but proposes a $0.00 monthly dividend in Section 3.06. Without a monthly dividend, the Trustee cannot comply with the Form Plan itself and will not be able to pay these fees a monthly dividend.

At the hearing, **xxxxxxx**

B. The modified Plan proposes to decrease the percentage to unsecured creditors from no less than 30% to no less than 28%, where the Trustee has already disbursed 28.26% to unsecured creditors. Since these funds have already been disbursed the Trustee will not get them back. Thus the Trustee requests that should the modified plan be confirmed, the Order state the unsecured creditors will receive no less than 28.26%.

As discussed above, it may be that there will be nothing to be disbursed in the future to creditors with unsecured claims, but they have received at least the minimum distribution.

C. The proposed plan includes the recently purchased home located at 805 Langton Ct., Lincoln, CA, in Class 4 and Debtor budgets the new mortgage payment and increased housing costs on Supplemental Schedule J. Debtor has not notified the Trustee of any change in the Debtor's address.

At the hearing, **xxxxxxx**

The Modified Plan does comply 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, Justin Ryan McCauley ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion to Confirm the Modified Plan is granted, and the proposed Modified Chapter 13 Plan filed on February 4, 2022, as amended to provide **xxxxxxx** ,is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, which states the above amendment, 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.

33. **17-26993-E-13 SLE-4** **JUSTIN MCCAULEY Steele Lanphier** **MOTION FOR COMPENSATION BY THE LAW OFFICE OF LANPHIER & ASSOCIATES FOR STEELE LANPHIER, DEBTORS ATTORNEY(S) 2-4-22 [45]**

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 4, 2022. By the court's calculation, 39 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.

Steele Lanphier, the Attorney ("Applicant") for Justin Ryan McCauley, 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 December 3, 2021 through March 15, 2022. Applicant requests fees in the amount of $4,455.00 and costs in the amount of $60.00.

TRUSTEE'S OBJECTION

The Chapter 13 Trustee, David P. Cusick ("Trustee"), filed an Opposition to Applicant's Motion for Compensation on March 7, 2022. Dckt. 60. The first ground in which Trustee opposes Applicant's Motion is that Applicant's requested fees include $525.00 for anticipated future work related to Applicant's Motion for Compensation. *Id.* at ¶ 1.

Trustee asserts that the additional $525.00 fee for anticipated future work cannot be

determined reasonable as such fees are for services that have not been completed and cannot be proven at this time. *Id.* Trustee further states that if the court "resolves [this] matter and takes it off of the calendar and no hearing is held, then [the $4,455.00 fee] should be adjusted to reflect that." *Id.* Trustee additionally clarifies that they *do not* oppose additional fees and costs in the amount of $3,990.00 ($3,930.00 in fees, $60.00 in costs) since that amount reflects the fees and costs associated with work that has already been done and properly billed according to the Exhibits. *Id.*

The only amount the Trustee opposes is the additional $525.00 for anticipated future work.

Taking Trustee's concern into consideration, the court will allow Applicant to recover $3,930.00 in fees for work Applicant has already done plus the additional up to $525.00 for fees Applicant may incur in connection with this present Motion for Compensation.

As the court has noted, the Trustee identifying the future fix fee amount is both proper and appreciated. There are two hearings occurring on March 15, 2022. The court has had clearly identified the future fee amount and can knowingly and clearly approve such future fixed fee.

Trustee raises a second ground in opposition to Applicant's Motion, which is that Client did not file a Declaration in support of Applicant's Motion for Compensation. *Id.* at ¶ 2. The court recognizes that other bankruptcy departments may require the Debtor/Client's Declaration in support when it comes to Motions for additional fees such as this. At this time the court declines to adopt such a requirement here and finds Applicant's own Declaration to be sufficient. The court will address this with the other judges and reach a mutual agreement so that there will be a uniform practice.

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 providing legal advice and rendering legal services to Client, as well as drafting various Motions in connection with Client's Chapter 13 bankruptcy case. 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. 18. Applicant prepared the order confirming the Plan. It should be noted, however, that Client has filed a Motion to Confirm Modified Chapter 13 Plan on February 4, 2022. Dckt. 39. Client's Motion to Confirm is set to be heard in conjunction with Applicant's present Motion for Compensation. Applicant asserts that the granting of this Motion for Compensation for additional fees will not impact Client since Client will pay Applicant's additional fees through the Modified Plan. Dckt. 45 at 2:22-23. Applicant further states that they will only be paid additional fees through the Modified Plan to the extent that funds are available, and that any remaining fees not covered by the Modified Plan will not be collected directly from Client. *Id.* at 2:24-26.

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. The hours spent in each category reflects the total amount of time spent on Client's bankruptcy case between *both* Applicant and Applicant's paralegal.

General Matters: Applicant spent 3.1 hours in this category. This category includes work that is generally related to all motions, and appears to mostly include communicating with Client.

Motion to Purchase Home: Applicant spent 8.5 hours in this category. Applicant communicated with Client to gather documentation, prepared Motion to Incur Debt, reviewed Trustee Response, prepared for hearings in connection with this matter and attended hearings.

Motion to Draw From 401(K): Applicant spent 4.5 hours in this category. Applicant conducted legal research on this matter and prepared the Motion

Motion for Fees: Applicant spent 3.6 hours in this category. Applicant prepared, reviewed, and filed the 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**
Steele Lanphier, Attorney	7.5 hours	$350.00	$2,625.00
Name(s) not given, Paralegal	12.2 hours	$150.00	$1,830.00
Total Fees for Period of Application			$4,455.00

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of

$60.00 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Cost
Copy and Postage (Motion to Incur Debt & Motion re 401(k) Withdraw)	$40.00
Copy and Postage (Motion for Fees)	$20.00
Total Costs Requested in Application	$60.00

FEES AND COSTS & EXPENSES ALLOWED

Fees

The unique facts surrounding the case, including the various Motions in which Applicant and his staff worked on, 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 $3,930.00 plus up to an additional $525.00 for fees that Applicant may incur through March 15, 2022 in connection with this Motion 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 $60.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

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

Fees	$4,455.00 (including the $525.00 fixed fee)
Costs and Expenses	$60.00

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

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

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

hearing.

The Motion for Allowance of Fees and Expenses filed by Steele Lanphier ("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 Steele Lanphier is allowed the following fees and expenses as a professional of the Estate:

Steele Lanphier, Professional Employed by Justin Ryan McCauley ("Debtor")

Fees in the amount of $4,455.00 (including the $525.00 fixed fee)

Expenses in the amount of $60.00,

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.

34. 19-20393-E-13 TLA-1 PAULINO/DENA MACHADO Thomas Amberg MOTION TO MODIFY PLAN 1-21-22 [47]

34 thru 35

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

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 21, 2022. By the court's calculation, 53 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.

The debtor, Paulino Azevedo Machado and Dena Michelle Machado ("Debtor") seeks confirmation of the Modified Plan because they have dealt with numerous repairs to vehicles which has caused them to fall behind on their payments. Declaration, Dckt. 50. The Modified Plan provides to pay a total of $165,924.91 from February 2019 to January 2022, pay $5,188.00 per month from February 2022 through January 2021, all previous distributions made by the Trustee are authorized, and a 51 percent dividend to unsecured claims totaling $96,296.23. Modified Plan, Dckt. 48. 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 March 1, 2022. Dckt. 58. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor is delinquent $5,188.00 in plan payments. TFS currently shows

there is an upcoming transaction dated February 27, 2022 in the amount of $5,189.00, which has not cleared the TFS system. If this payment clears and posts to the Trustee's system on approximately March 7, 2022, Debtor will be current under the proposed Modified Plan.

B. Trustee cannot assess the feasibility of the plan because the modified Plan proposes to add $5,925.80 in post-petition mortgage arrears when the Trustee's records reflect the current principal due is $2,673.34 for the February 2022 mortgage payment.

C. The court noted that the Motion to Modify, Dckt. 47, did not comply with the requirement of Federal Rule of Bankruptcy Procedure 9013 because it does not state grounds with particularity upon which the requested relief is based.

DEBTOR'S RESPONSE

On March 8, 2022, Debtor filed a Response to Trustee's Opposition. Dckt. 61. Debtor states the outstanding payment of $5,189.00 posted to Debtor's account on March 7, 2022. Debtor has been instructed that TFS payments will need to be initiated earlier to avoid this issue.

Further, Debtor requests that Section 3.07(b) of the plan can be clarified in the Order Confirming Plan. Now that Debtor's payment has posted, Debtor can specify the exact amount of a post-petition arrearage and the exact months to be cured.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is $5,188.00 delinquent in plan payments, which represents one month of the $5,188.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

However, Trustee's Response indicates the delinquent payment has been processed by the TFS system on March 7, 2022, and Debtor is current on Plan payments.

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). The modified Plan proposes to add $5,925.80 in post-petition mortgage arrears when the Trustee's records reflect the current principal due is $2,673.34 for the February 2022 mortgage payment Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

However, Debtor indicates this amount can be clarified in the Order.

At the hearing, **XXXXXXX**

Insufficient Motion

Debtor has complied with the Civil Minutes Order filed February 14, 2022, Dckt.54, by filing a Supplemental Motion and Supplemental Declaration. Dckt. 55 & 56. Upon review of these documents Debtor successfully states grounds with particularity.

The Modified Plan complies 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, Paulino Azevedo Machado and Dena Michelle Machado ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on January 21, 2022, as amended to **xxxxxxx** ,is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, including the forgoing amendment, 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.

35. 19-20393-E-13 DPC-1 | **PAULINO/DENA MACHADO** | **CONTINUED MOTION TO DISMISS CASE**
Thomas Amberg | **1-12-22 [40]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 12, 2022. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss is ~~denied without prejudice~~.

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

1. The debtors, Paulino Azevedo Machado and Dena Michelle Machado ("Debtors"), are delinquent $6,156.37 in Plan payments. Debtors' monthly payment is $4,939.09, prior to the hearing another payment of $4,939.09 will come due. As a result Debtors will need to pay $11,095.46, in order to bring this Plan current by the date of the hearing.

DEBTOR'S RESPONSE

Debtor filed a Response on January 19, 2022. Dckt. 44. Debtor states the delinquency will be cured prior to the hearing date.

FILING OF A MODIFIED PLAN

Debtor filed a Modified Plan and Motion to Confirm on January 21, 2022. Dckt. 48. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 47, 50.

The Motion does not state grounds with particularity, Federal Rule of Bankruptcy Procedure 9013 requirement, upon which the relief, confirmation of the Modified Plan, may be granted. The

grounds stated in the Motion to Confirm makes several factual allegations, but if all are taken as true, they would not satisfy the requirements to confirm a modified plan as Congress has established in 11 U.S.C. §§ 1329, 1325, and 1322.

The court continues the hearing to afford Debtor the opportunity to file a supplemental pleading to the Motion (not an amended motion) stating the grounds with particularity and supporting pleadings relating thereto.

March 15, 2022 Hearing

~~The court having confirmed Debtor's Modified Plan, the Motion to Dismiss 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 Dismiss the Chapter 13 case 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 Motion to Dismiss is denied without prejudice.~~

FINAL RULINGS

36.	**21-24305-E-13** **36 thru 38**	**MICHELLE PARKS** **Julius Cherry**	**OBJECTION TO CONFIRMATION OF PLAN BY ALLY BANK** **2-9-22 [24]**

Final Ruling: No appearance at the March 15, 2022 hearing is required.

The Objection to Confirmation is dismissed without prejudice.

Ally Bank ("Creditor") having filed a Notice of Withdrawal of Objection to Confirmation Chapter 13 Plan, which the court construes to be an *Ex Parte* Motion to Dismiss the pending Objection on February 9, 2022. Dckt. 24; no prejudice to the responding party appearing by the dismissal of the Objection; Creditor having the right to request dismissal of the objection pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by the debtor, Michelle Marie Parks ("Debtor"); **the *Ex Parte* Motion is granted, the Creditor's Objection is dismissed without prejudice, the court removes this Objection from the calendar.**

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 Confirmation filed by Ally Bank having been presented to the court, Ally Bank having filed a "Withdrawal" of the Objection (Dckt. 41), which the court construes as a motion to dismiss without prejudice the Objection (Fed. R. Civ. P. 41(a)(2), and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is dismissed without prejudice.

37. 21-24305-E-13 GC-1 | **MICHELLE PARKS** **Julius Cherry** | **MOTION FOR ORDER SETTING SECURED CLAIM OF ALLY BANK 1-31-22 [14]**

Final Ruling: No appearance at the March 15, 2022 Hearing is required.

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 Chapter 13 Trustee, Creditor, and Office of the United States Trustee on January 19, 2022. By the court's calculation, 56 days' notice was provided. 14 days' notice is required.

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

The court has determined that oral argument will not be of assistance in rendering a decision in this matter.

The Motion to Value Collateral and Secured Claim of Ally Bank ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $17,216.83.

The Motion filed by Michelle Marie Parks ("Debtor") to value the secured claim of Ally Bank ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 16. Debtor is the owner of a 2020 Yaris Hatchback ("Property"). Debtor seeks to value the Property at a replacement value of $17,216.83 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). Debtor further wishes to cancel the extended warranty agreement and the gap or debt cancellation insurance, which were financed in the amount of $2,740.00 and $895.00, respectively. Dckt. 14.

The lien on the Property secures a purchase-money loan incurred in September 2020, which is within the 901 day period of the handing paragraph in 11 U.S.C. § 1325 which bars valuing a purchase money obligation secured by a vehicle. Here, the debt owed to Creditor has a balance of approximately $20,569.06, Proof of Claim, No. 2-1, which includes non-purchase money obligations (including extended warranty and refinancing balance due on trade-in). Creditor's claim secured by a lien against the Property is under-collateralized and Debtor seeks to have it revalued to not more than the purchase money obligation and value of the property for any non-purchase money portion of the claim. Creditor's secured claim is determined to be in the amount of $17,216.83, 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.

Creditor's Opposition and Withdrawal

On March 1, 2022, Creditor filed an opposition stating Debtor did not value the collateral correctly. Dckt. 29. However, on March 2, 2022, Creditor withdrew its opposition to Motion for Order Setting Secured Claim. Dckt. 42.

Trustee's Opposition to the Motion

Trustee is unsure if the amounts provided in the motion are accurate as Debtor did not provide a copy of the vehicle's Sales Agreement as an exhibit along with the motion. Further, the Trustee is unclear as to what amounts are due.

Creditor has filed Proof of Claim 2-1, to which a copy of the Purchase Contract is attached. The price for the Vehicle is stated to be $18,903.00. In addition there is the sales tax and registration.

The Service Contract is listed with a price of $2,740.00 and the Debt Cancellation Agreement is $895.00.

Here, the Debtor has provided her opinion as the owner of the Vehicle that it has a value of $17,216.83. This is evidence of value and no counter evidence has been presented.

Though Debtor did not use it, Creditor's Proof of Claim, asserts a secured claim in the amount of $22,569.06. This is greater than the evidentiary value of the vehicle. Creditor has not asserted that the reduction to the value of the vehicle is improper or a violation of the "hanging paragraph" in 11 U.S.C. § 1325.

The Motion is granted and the value of Creditor's secured claim is determined to be $17,216.83, with the balance constituting a general unsecured claim.

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 Michelle Marie Parks ("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 Ally Bank ("Creditor") secured by an asset described as 2020 Yaris Hatchback ("Property") is determined to be a secured claim in the amount of $17,216.83, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $17,216.83 and is encumbered by a lien securing a claim that exceeds the value of the asset.

38. **21-24305-E-13 DPC-1** | **MICHELLE PARKS** **Julius Cherry** | **OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE DAVID P. CUSICK** **2-9-22 [20]**

Final Ruling: No appearance at the March 15, 2022 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 9, 2022. By the court's calculation, xx days' notice was provided. 35 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 court has determined that oral argument will not be of assistance in rendering a decision in this matter.

The Objection to Confirmation of Plan is overruled, and the Chapter 13 Plan is confirmed.

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

A. The Debtor is delinquent in plan payments.

B. The Plan relies on Debtor's pending Motion for Order Setting Secured Claim of Ally Bank.

Debtor's Response to Objection

Debtor filed a Response to Trustee's Objection to Confirmation on March 1, 2022. Dckt. 33. Debtor represents that they are current on plan payments. The Debtor further represents that the plan is not dependent on their Motion valuing the claim of Ally Bank as there is enough money to fund the plan whether the motion is granted or not.

DISCUSSION

Trustee's objections are well-taken.

Delinquency

Debtor is $550.00 delinquent in plan payments, which represents one month of the $550.00 plan payment. Before the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor's Reliance on Motion to Value Secured Claim

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Ally Bank. In conjunction with this motion, the Motion Setting Secured Claim of Ally Bank (Docket Control No. GC-1) has been granted. Therefore, this objection is moot.

Trustee's Status Report March 8, 2022

On March 8, 2022, Trustee filed a status report stating Debtor is now current in plan payments. Dckt. 45. Additionally, Trustee notes why they raised the Motion to Value issue in their objection.

Debtor's Status Report March 9, 2022

Debtor filed a status report addressing Trustee's objections. Dckt. 46.

Trustee's concerns are resolved.

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 Michelle Marie Parks' ("Debtor") Chapter 13 Plan filed on December 31, 2021, 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.

39.	**22-20209-E-13**	**RUBEN URANGA**	**MOTION TO VALUE COLLATERAL OF**
	MRL-1	**Mikalah Liviakis**	**ONEMAIN FINANCIAL GROUP, LLC**
			1-30-22 [10]

Final Ruling: No appearance at the March 15, 2022 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 January 31, 2022. By the court's calculation, 44 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 Onemain Financial Group, LLC ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $7,700.00.

The Motion filed by Ruben Mario Uranga ("Debtor") to value the secured claim of Onemain Financial Group, LLC ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 12. Debtor is the owner of a 2013 VW Jetta ("Property"). Debtor seeks to value the Property at a replacement value of $7,700.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Property secures a non-purchase money loan incurred on or about December 2021 to secure a debt owed to Creditor with a balance of approximately $16,547.00. Declaration, Dckt. 12. Therefore, Creditor's claim secured by a lien against the Property is under-collateralized. Creditor's secured claim is determined to be in the amount of $7,700.00, 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.

Non-Opposition of Trustee

The Trustee filed a nonopposition on March 1, 2022. Dckt. 21.

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 Name of Debtor ("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 Onemain Financial Group, LLC ("Creditor") secured by an asset described as 2013 VW Jetta("Property") is determined to be a secured claim in the amount of $7,700.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $7,700.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

40. **17-21823-E-13 GW-3** | **EFRAIN/MELANIE MERCADO** **Gerald White** | **MOTION FOR COMPENSATION FOR GERALD L. WHITE, DEBTORS ATTORNEY(S)** **2-9-22 [44]**

Final Ruling: No appearance at the March 15, 2022 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, parties requesting special notice, and Office of the United States Trustee on February 9, 2022. The Proof of Service further states the Notice only was served on creditors. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

Gerald L. White, the Attorney ("Applicant") for Efrain Mercado, Jr. and Melanie Joi Mercado, the Debtor ("Client"), makes a third and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period January 10, 2019, through February 9, 2022. Applicant requests fees in the amount of $1,170.00 and costs in the amount of $0.00.

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 post confirmation case management. 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.

Post Confirmation Case Management: Applicant spent 3.9 hours in this category. Applicant corresponded with Debtor and the Franchise Tax Board.

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**
Gerald L. White	3.90	$300.00	$1,170.00
Total Fees for Period of Application			$1,170.00

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

Application	**Interim Approved Fees**	**Interim Fees Paid**
First Interim	$5,385.00	$5.39
Second Interim	$1,305.00	$1.305.00
Total Interim Fees Approved Pursuant to 11 U.S.C. § 331	$6,690.00	

Costs & Expenses

Applicant does not seek the allowance and recovery of costs and expenses. Pursuant to prior interim applications, the court has allowed costs of $310.00.

FEES AND COSTS & EXPENSES ALLOWED

Fees

Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. Third and Final Fees in the amount of $1,170.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid from the available funds held in trust.

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

Fees	$1,170.00
Costs and Expenses	$0.00

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Gerald L. White ("Applicant"), Attorney for Efrain Mercado, Jr. and Melanie Joi Mercado, Chapter 13 Debtor, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Gerald L. White is allowed the following fees and expenses as a professional of the Estate:
>
> Gerald L. White, Attorney for Debtor
>
> Fees in the amount of $1,170.00
> Expenses in the amount of $0.00,
>
> which shall be paid from the monies in Applicant's Client Trust Account for this case as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for Chapter 13 Debtor.

41. 18-24928-E-13 WW-2 MARVIN/GINA DOMINGUEZ Mark Wolff MOTION TO MODIFY PLAN 1-26-22 [58]

Final Ruling: No appearance at the March 15, 2022 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 January 26, 2022. By the court's calculation, 48 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. The debtor, Marvin Antonio Dominguez and Gina Marie Dominguez ("Debtor"), has filed evidence in support of confirmation. No opposition to the Motion has been filed by creditors. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response indicating non-opposition on February 14, 2022. Dckt. 66. The Modified Plan 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, Marvin Antonio Dominguez and Gina Marie Dominguez ("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, 2022, 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 Trustee will submit the proposed order to the court.

42. **18-24928-E-13 DPC-4** | **MARVIN/GINA DOMINGUEZ** **Mark Wolff** | **CONTINUED MOTION TO DISMISS CASE** **12-22-21 [53]**

Final Ruling: No appearance at the March 15, 2022 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 22, 2022. By the court's calculation, 49 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss is denied.

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

1. the debtor, Marvin Antonio Dominguez and Gina Marie Dominguez ("Debtor"), is delinquent in plan payments.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on January 26, 2022. Dckt. 57. Debtor states they have partially cured the delinquency but are unable to cure the remaining delinquency prior to the hearing date and therefore will file a Modified Chapter 13 plan to cure arrears and resume ongoing monthly payments. Opposition, Dckt. 57. Debtor did not file a proof of service for their opposition.

DEBTOR'S PENDING MODIFIED PLAN

Debtor filed a First Modified Plan on January 26, 2022. Dckt. 62. The hearing for confirmation of Debtor's First Modified Plan is set for March 15, 2022 at 2:00 p.m. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckts. 58, 60.

The Motion does not to comply with Federal Rule of Bankruptcy Procedure 9013 and does not state grounds with particularity for confirmation of a modified plan as required by 11 U.S.C. §§ 1329, 1325, 1322. The grounds stated in the Motion to Confirm (Dckt. 58) are:

A. Debtor filed this bankruptcy case;

B. Debtor has filed a First Modified Chapter 13 Plan;

C. Debtor is delinquent $9,221.55 under the Confirmed Chapter 13 Plan;

D. Debtor will pay an additional amount to the Trustee;

E. Debtor is filing Supplemental Schedules I and J;

F. The Bankruptcy Code allows a debtor to modify a plan; and

G. The legal conclusion that "Debtors' modified plan meets the requirements set out in 11 U.S.C. §§ 1322(a), 1322(b), 1322(c), and 1325(a) for confirmation of chapter 13 plans.

Dckt. 58. While providing the court with Debtor's legal conclusion, the Debtor does not state what grounds under §§ 1322(a), 1322(b), 1322(c), and 1325(a) are the grounds stated with particularity upon which the requested relief is based. The various sections having conflicting grounds upon which a modified plan is confirmed, depending upon what the terms of the modified plan are for which confirmation is requested.

The court continues the hearing to afford Debtor the opportunity to file a supplemental pleading to the Motion (not an amended motion) stating the grounds with particularity and supporting pleadings relating thereto.

DEBTOR'S MOTION TO CONFIRM MODIFIED PLAN

Since the prior hearing on Trustee's Motion to Dismiss Debtor's Chapter 13 Bankruptcy case, Trustee has filed a Response to Debtor's Motion to Confirm Modified Plan indicating that Trustee does not oppose Debtor's Motion. Dckt. 66. Trustee believes Debtor's proposed plan meets the criteria for confirmation under 11 U.S.C. §§ 1329 and 1325. *Id*. Trustee additionally states that they received a Plan payment of $4,192.82 on February 8, 2022, and that Debtors are now current under their proposed Plan. *Id.*

Debtor has also filed a supplemental pleading to their Motion to Confirm First Modified Chapter 13 Plan. See Dckt. 68. In addition to the grounds stated in Debtor's original Motion to Confirm, Debtor's supplemental pleading further explains:

A. Debtor fell behind in Plan payments as Debtor was off work due to supply chain shortages;

B. Debtor is now back to working their normal hours;

C. Debtor is filing supplemental schedules I and J to show their projected income and expenses and demonstrate their ability to afford the increased Plan payments under the

proposed Plan;

D. Debtor is paying Toyota Financial as a Class 2(A) creditor and is paying Safe Credit Union with a lien on their residence as a Class 1 creditor;

E. Debtor's proposed Plan will pay the same amount to general unsecured creditors as under the previous Plan; and

F. Under Debtor's proposed Plan, unsecured creditors will receive no less than 0.00% dividend.

Id.

As Trustee does not oppose Debtor's Motion to Confirm and the court has granted the Motion to Confirm Modified Plan, the court denies the present Motion to Dismiss.

> The Motion to Dismiss the Chapter 13 case 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 Motion to Dismiss is denied without prejudice, and the bankruptcy case shall proceed in this court.

43. **18-26833-E-13 PGM-1** **TEODULFO/ANNALYN DELA CRUZ** **Peter Macaluso** **MOTION TO MODIFY PLAN 1-31-22 [38]**

Final Ruling: No appearance at the March 15, 2022 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 January 31, 2022. By the court's calculation, 43 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. The debtor, Teodulfo Tembrevilla DeLa Cruz and Annalyn Rojo DeLa Cruz("Debtor"), has filed evidence in support of confirmation. No opposition to the Motion has been filed by the Chapter 13 Trustee, David Cusick ("Trustee"), or by creditors. The Modified Plan 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, Teodulfo Tembrevilla DeLa Cruz and Annalyn Rojo DeLa Cruz ("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 31, 2022, 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 Trustee will submit the proposed order to the court.

44. 20-24239-E-13 RLC-6 — ROBIN/THOMAS HARLAND — Stephen Reynolds — MOTION TO MODIFY PLAN — 1-4-22 [98]

Final Ruling: No appearance at the March 15, 2022 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 January 14, 2022. By the court's calculation, 60 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. The debtor, Thomas Scott Harland ("Debtor"), has filed evidence in support of confirmation. No opposition to the Motion has been filed by the Chapter 13 Trustee, David Cusick ("Trustee"), or by creditors. The Modified Plan 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, Thomas Scott Harland ("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 4, 2022, 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 Trustee will submit the proposed order to the court.

45. 22-20239-E-13 PGM-1 — BETHANY JOHNSON — Peter Macaluso — FINAL HEARING RE: MOTION TO EXTEND AUTOMATIC STAY — 2-4-22 [11]

Final Ruling: No appearance at the March 15, 2022 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 4, 2022. By the court's calculation, 11 days' notice was provided. 14 days' notice is required.

On February 4, 2022, Debtor filed a Motion to Shorten Time for the instant Motion to Extend Automatic Stay. Dckt. 10. The court granted Debtor's Motion the same day. Dckt. 15.

The Motion to Extend the Automatic Stay 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.

The Motion to Extend the Automatic Stay is granted.

Bethany Elaine Johnson ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 19-25324) was dismissed on October 26, 2021, after Debtor failed to make minimum payments with respect to the terms of their confirmed plan. *See* Order, Bankr. E.D. Cal. No. 19-25324, Dckt. 121, October 26, 2021. The court notes there appears to be

a typographical error in the Motion where Debtor references the prior bankruptcy case as 19-25354. The correct case number is 19-25324. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because they failed to make minimum payments with respect to their confirmed plan.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). As this court has noted in other cases, Congress expressly provides in 11 U.S.C. § 362(c)(3)(A) that the automatic stay **terminates as to Debtor**, and nothing more. In 11 U.S.C. § 362(c)(4), Congress expressly provides that the automatic stay **never goes into effect in the bankruptcy case** when the conditions of that section are met. Congress clearly knows the difference between a debtor, the bankruptcy estate (for which there are separate express provisions under 11 U.S.C. § 362(a) to protect property of the bankruptcy estate) and the bankruptcy case. While terminated as to Debtor, the plain language of 11 U.S.C. § 362(c)(3) is limited to the automatic stay as to only Debtor. The subsequently filed case is presumed to be filed in bad faith if one or more of Debtor's cases was pending within the year preceding filing of the instant case. *Id.* § 362(c)(3)(C)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209–10 (2008). An important indicator of good faith is a realistic prospect of success in the second case, contrary to the failure of the first case. *See, e.g.*, *In re Jackola*, No. 11-01278, 2011 Bankr. LEXIS 2443, at *6 (Bankr. D. Haw. June 22, 2011) (citing *In re Elliott-Cook*, 357 B.R. 811, 815–16 (Bankr. N.D. Cal. 2006)). Courts consider many factors—including those used to determine good faith under §§ 1307(c) and 1325(a)—but the two basic issues to determine good faith under § 362(c)(3) are:

A. Why was the previous plan filed?

B. What has changed so that the present plan is likely to succeed?

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

Debtor has sufficiently demonstrated the case was filed in good faith/rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay. Debtor states that their circumstances have change since the previous bankruptcy case was dismissed. Debtor states that they have maintained steady employment, adjusted their household finances, and obtained a new child care provider which affords Debtor the ability to maintain employment and financial stability. Dckt. 13.

The Motion is granted on an interim basis, and the automatic stay is extended for all purposes and parties through March 30, 2022, unless terminated by operation of law or further order of this court, or as further extended by the court.

Final Hearing

Pursuant to court order, Debtor's Motion to Extend the Automatic Stay was granted on an interim

basis, and the automatic stay was extended for all purposes and parties through March 30, 2022, unless terminated by operation of law or further order of this court, or as further extended by the court. Order, Dckt. 22. The order further states that the final hearing on this Motion will be conducted on March 15, 2022 and that any oppositions must be in writing and filed and served on or before March 4, 2022. *Id.* No oppositions to Debtor's Motion to Extend the Automatic Stay have been timely filed.

The Motion is granted and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) until it is terminated by operation of law or further order of the court.

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 Extend the Automatic Stay filed by Bethany Elaine Johnson ("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 the Automatic Stay provisions of 11 U.S.C. § 362 are extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all persons and purposes, unless terminated by operation of law or further order of this court..

46. **21-23640-E-13 MJD-2** | **FLYNN JEMERSON** **Mathew DeCaminada** | **MOTION TO VALUE COLLATERAL OF ONEMAIN FINANCIAL GROUP, LLC 2-3-22 [38]**

Final Ruling: No appearance at the March 15, 2022 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 3, 2022. By the court's calculation, 40 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 OneMain Financial Group, LLC ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $6,786.43.

The Motion filed by Flynn Earl Jemerson ("Debtor") to value the secured claim of OneMain Financial Group, LLC ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 40. Debtor is the owner of a 2004 BMW 325i ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $3,155.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Trustee's Nonopposition

Trustee filed a nonopposition on March 1, 2022. Dckt. 48.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on or about April 22, 2019, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a

balance of approximately $6,786.43. Proof of Claim, No. 3. 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 $6,786.43, 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 Flynn Earl Jemerson ("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 OneMain Financial Group, LLC ("Creditor") secured by an asset described as 2004 BMW 325i ("Vehicle") is determined to be a secured claim in the amount of $6,786.43, 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 $3,155.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

47. **21-23640-E-13 MJD-1** **FLYNN JEMERSON** **Matthew DeCaminada** **MOTION TO CONFIRM PLAN 2-3-22 [31]**

Final Ruling: No appearance at the March 15, 2022 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 19, 2022. By the court's calculation, 55 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is granted.

The debtor, Flynn Earl Jemerson ("Debtor"), seeks confirmation of the Amended Plan. Under Debtor's Amended Chapter 13 Plan, Debtor moved the claim of creditor One Main Financial from Class 2(A) to Class 2(B). Motion to Confirm, Dckt. 31 at 3. Debtor additionally amended the amount owed to creditor Lighthouse at Bridgeport Owners' Association on Class 2(A). *Id.* Finally, Debtor amended the amount owed to unsecured in § 3.14 based on the claims filed. *Id.* The Amended Plan provides for payments of $475.00 per month for months 1 through 3 and $555.00 thereafter for the remainder of the Plan. Amended Plan, Dckt. 35. 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 22, 2022. Dckt. 43. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor's proposed Plan relies on the court granting Debtor's Motion to Value Collateral and Secured Claim of OneMain Financial Group LLC ("OneMain"), which is set for hearing concurrently with this Motion to Confirm.

DISCUSSION

Debtor's Reliance on Motion to Value Secured Claim

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of OneMain. Debtor filed a Motion to Value Collateral and Secured Claim of OneMain on February 3, 2022. Dckt. 38. Trustee filed a Non-Opposition to Debtor's Motion on March 1, 2022. Dckt. 48. The creditor, OneMain, did not file an opposition or response to Debtor's Motion to Value. Given Trustee's non-opposition and OneMain's non-response, the court has granted Debtor's Motion to Value Collateral and Secured Claim of OneMain. Since Debtor's present Motion to Confirm Amended Plan hinged upon the court's granting of Debtor's Motion to Value, Debtor's Motion to Confirm First Amended Chapter 13 Plan is subsequently also granted.

The Amended Plan complies with 11 U.S.C. §§ 1322, 1323, and 1325(a) 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 Amended Chapter 13 Plan filed by the debtor, Flynn Earl Jemerson ("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 February 3, 2022, 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.

48. **21-23744-E-13 DPC-3** **CARLOS PALACIOS-CAZARES** **Peter Macaluso** **OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS** **1-27-22 [66]**

Final Ruling: No appearance at the March 15, 2022 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 and Debtor's Attorney on January 27, 2022. By the court's calculation, 47 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 overruled as moot.

The Chapter 13 Trustee, David P. Cusick ("Trustee") objects to Carlos Palacios-Cazares's ("Debtor") claimed exemptions under California law because Debtor's claimed exemptions in their Amended Schedule C (Dckt. 50) improperly relied on California Code of Civil Procedure §§ 704.010 - 704.070 and § 704.730, which the court had previously disallowed in their entirety in sustaining Trustee's original Objection to Debtor's Claim of Exemptions (see Dckt. 32). Order, Dckt. 61.

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.*

Upon the court's review, it appears Debtor's Attorney filed a duplicate of the original Schedule C where claimed exemptions have been disallowed in their entirety. Debtor's Attorney has rectified this by filing an Amended Schedule C on February 4, 2022 which shows Debtor's claimed exemptions under other related provisions of California Code of Civil Procedure §§ 703.140(b). Dckt. 70. Debtor refers to this Amended Schedule C (Dckt. 70) and asserts that Trustee's Objection is moot. *Id.*

Debtor's claimed exemptions in their Amended Schedule C appear to be appropriate. Debtor's

aggregate interest in real property or personal property under California Code of Civil Procedure §§ 703.140(b)(1) and 703.140(b)(5) comes out to exactly $30,825.00, which is the maximum aggregate interest allowed by those two provisions. See Dckt. 70. The amount of exemption Debtor claimed for properties pursuant to California Code of Civil Procedure §§ 703.140(b)(3); 703.140(b)(4); and 703.140(b)(6) all fall within the statutory limit. Thus, it indeed appears that Trustee's Objections are now moot. If Trustee seeks to further object to Debtor's exemptions filed under Docket 70, Trustee should file a new objection.

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 overruled without prejudice as moot, Debtor having filed an Amended Schedule C on February 4, 2022 (Dckt. 70). Overruling the Objection is without prejudice to the Trustee or any other party in interest filing an objection to any exemptions claimed in the latest Amended Schedule C (Dckt. 70).

49. **21-21546-E-13 PSB-3** **CHRISTOPHER KEENER** **Paul Bains** **MOTION FOR COMPENSATION FOR PAULDEEP BAINS, DEBTORS ATTORNEY(S)** **2-7-22 [65]**

Final Ruling: No appearance at the March 15, 2022 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 7, 2022. 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.

Pauldeep Bains, the Attorney ("Applicant") for Christopher Steven Keener, 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 October 14, 2021, through February 7, 2022. Applicant requests fees in the amount of $2,260.00.

TRUSTEE'S NON-OPPOSITION

On March 1, 2022, David Cusick, Chapter 13 Trustee, filed a Non-Opposition to the Motion for Compensation. Dckt. 70.

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 work for the Estate includes communications and preparation of pleadings in connection with the Motion to Dismiss Case; communications and preparation of pleadings in connection with the Motion to Modify Chapter 13 Plan; and preparation of pleadings in connection with the Motion for Compensation. 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. 26. 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 2.6 Attorney hours and 0.80 Paralegal hours in this category. Applicant corresponded regarding the Motion; prepared and served a response and attended the hearing on the Motion.

Motion to Confirm Debtor's First Modified Plan: Applicant spent 1.8 Attorney hours and 1.7 Paralegal hours in this category. Applicant corresponded regarding the Motion, and prepared and served the pleadings.

Motion to Compensation: Applicant spent 1.5 Attorney hours in this category. Applicant prepared the 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
Pauldeep Bains, Attorney	5.9	$350.00	$2,065.00
Tina Perez, Paralegal	2.5	$185.00	$462.50

Fee Reduction (.5 hours of Attorney time and .5 hours of paralegal time)	$267.50
Total Fees for Period of Application	$2,260.00

FEES AND COSTS & EXPENSES ALLOWED

Fees

The unique facts surrounding the case, including communications and preparation of pleadings in connection with the Motion to Dismiss Case; communications and preparation of pleadings in connection with the Motion to Modify Chapter 13 Plan; and preparation of pleadings in connection with the Motion for Compensation, 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 $2,260.00 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 $2,260.00

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Pauldeep Bains ("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 Pauldeep Baines is allowed the following fees and expenses as a professional of the Estate:
>
> Pauldeep Baines, Attorney for Christopher Steven Keener ("Debtor")
>
> Fees in the amount of $2,260.00,
>
> 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. in the amount of $2,260.00.

50.	**09-39848-E-13** **DBJ-5**	**RYAN/JAMIE GORDON** **Douglas Jacobs**	**MOTION TO VALUE COLLATERAL OF FRANKLIN W. JOHNSON** **1-24-22 [125]**

Final Ruling: No appearance at the March 15, 2022 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, parties requesting special notice, and Office of the United States Trustee on January 24, 2022. By the court's calculation, 50 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 Franklin W. Johnson ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $0.00.

The Motion to Value filed by Ryan Gordon and Jamie Gordon ("Debtor") to value the secured claim of Franklin W. Johnson ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 127. Debtor is the owner of the subject real property commonly known as 20375 Reeds Creek Rd, Red Bluff, California ("Property"). Debtor seeks to value the Property at a fair market value of $218,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

NO PROOF OF CLAIM FILED

The court has reviewed the Claims Registry for this bankruptcy case. No Proof of Claim has been filed by a creditor that appears to be for the claim to be valued.

OPPOSITION

Creditor has not filed an Opposition.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $243,000.00. Schedule D, Dckt. 1. Creditor's short form deed of trust secures a claim with a balance of approximately $6,493.50. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, the value of the collateral, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue 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 Ryan Gordon and Jamie Gordon ("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 Franklin W. Johnson ("Creditor") secured by a short form in priority deed of trust recorded against the real property commonly known as 20375 Reeds Creek Rd, Red Bluff, California, is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $218,000.00 and is encumbered by a senior lien securing a claim in the amount of $243,00.00, which exceeds the value of the Property that is subject to Creditor's lien.

51. 17-28248-E-13 TLA-2 — SHAUN TAYLOR — Thomas Amberg — MOTION TO APPROVE LOAN MODIFICATION — 1-19-22 [62]

Final Ruling: No appearance at the March 15, 2022 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 January 19, 2022. By the court's calculation, 55 days' notice was provided. 28 days' notice is required.

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

The Motion to Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by Shaun Amanda Taylor ("Debtor") seeks court approval for Debtor to incur post-petition credit. Freedom Mortgage Corporation ("Creditor"), whose claim the Plan provides for in Class 1, has agreed to a loan modification that will reduce Debtor's mortgage payment from the current $1,32.94 per month to $1,041.90 per month. The modification will allow Debtor to become current under the mortgage.

The Motion is supported by the Declaration of Shaun Amanda Taylor. Dckt. 64. 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 NON-OPPOSITION

On March 1, 2022, David Cusick, Chapter 13 Trustee, Filed a Non-Opposition to Debtor's Motion to Approve Loan Modification. Dckt. 67. Trustee does not oppose this Motion so long as Debtor promptly files amended Schedules I/J supporting the Motion.

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 Shaun Amanda Taylor ("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 Shaun Amanda Taylor to amend the terms of the loan with Freedom Mortgage Corporation ("Creditor"), which is secured by the real property commonly known as 5535 Georgia Drive, North Highlands, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion (Dckt. 65).

52. **18-26350-E-13 PGM-5** | **ROQUE DELAROSA** **Peter Macaluso** | **MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTORS ATTORNEY(S)** **1-18-22 [103]**

Final Ruling: No appearance at the March 15, 2022 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 January 18, 2022. By the court's calculation, 56 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 Roque Delarosa, 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 18, 2021, through December 21, 2021. Applicant requests fees in the amount of $1,200.00.

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 meeting with client, preparing and filing Motion to Modify Plan, reviewing Response to Motion, preparing Reply to Response, attending the hearing on Motion, and prepared order. 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. 102. 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 Modify Plan: Applicant spent 5.15 hours in this category. Applicant met with client, prepared and filed Motion, reviewed Response, prepared and filed Reply to Response, attended hearing, and prepared order.

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, Attorney	4.75	$300.00	$1,425.00
Legal Assistant	0.40	$75.00	$30.00
Total Fees for Period of Application			$1,455.00

Applicant acknowledges the Total Fees for Period of Application does not align with the Amount of Fees Request. Applicant state in the best interest of the Debtor and furtherance of the Plan, he respectfully requests that the Court allow additional fees of $1,200.00 in additional expenses to be paid through the Chapter 13 Plan. Applicant Declaration, Dckt. 105.

FEES AND COSTS & EXPENSES ALLOWED

Fees

The unique facts surrounding the case, including meeting with client, preparing and filing Motion to Modify Plan, reviewing Response to Motion, preparing Reply to Response, attending the hearing on Motion, and prepared order, 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 $1,200.00 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.

The court authorizes the Chapter 13 Trustee under the confirmed plan to pay 100% of the fees

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

Fees $1,200.00

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Peter 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 Roque Delarosa ("Debtor")
>
> Fees in the amount of $1,200.00,
>
> 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.

53. 21-24254-E-13 DPC-1 | **OLGA BOLIN** Mikalah Liviakis | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **2-8-22 [18]**

Final Ruling: No appearance at the March 15, 2022 hearing is required.

The Objection to Confirmation is dismissed without prejudice.

The Chapter 13 Trustee, David Cusick (the "Trustee"), having filed a Notice of Dismissal, which the court construes to be an Ex Parte Motion to Dismiss the pending Objection on March 7, 2022, Dckt. 22; no prejudice to the responding party appearing by the dismissal of the Objection; the Trustee having the right to request dismissal of the objection pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by the debtor, Olga Bolin ("Debtor"); **the *Ex Parte* Motion is granted, the Trustee's Objection is dismissed without prejudice, the court removes this Objection from the calendar, and the Chapter 13 Plan filed on December 24, 2021, is confirmed.**

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

54. **17-28058-E-13 SLH-2** **RUSSELL SOMERVILL** **Seth Hanson** **MOTION TO MODIFY PLAN** **1-26-22 [55]**

Final Ruling: No appearance at the March 15, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on January 26, 2022. By the court's calculation, 48 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. The debtor, Russell Martin Somervill ("Debtor"), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on March 1, 2022. Dckt. 65. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

TRUSTEE'S NON-OPPOSITION

The court reviewed the Motion and Declaration of the proposed modified Plan in its review of the Trustee's Motion to Dismiss, which was heard on February 9, 2022. The court noted that the Motion to Modify (Dckt. 55) did not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013. The court's Civil Minute Order filed on February 11, 2022, Dckt. 61, continued the Trustee's Motion to Dismiss from February 9, 2022, to March 15, 2022, to be heard in conjunction with this Motion. Debtor was to file and serve a supplemental Motion and any supporting pleadings by February 23, 2022. Dckt. 61. Debtor has complied with the court's Order and filed a Supplemental Motion, Dckt. 62, and a Supplemental Declaration, Dckt. 63, that address the issues raised by the court.

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, Russell Martin Somervill ("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 25, 2022, 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 Trustee will submit the proposed order to the court.

55. **17-28058-E-13** **RUSSELL SOMERVILL** **CONTINUED MOTION TO DISMISS CASE**
DPC-1 **Seth Hanson** **1-12-22 [44]**

Final Ruling: No appearance at the March 15, 2022 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 12, 2022. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss is denied without prejudice.

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

1. the debtor, Russell Martin Somervill ("Debtor"), is delinquent on plan payments.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on January 25, 2022. Dckt. 48. Debtor states he sent a plan payment in the amount of $1,775.00 on January 20, 2022. Debtor also states that they will file a modified plan prior

to the hearing.

FILING OF MODIFIED PLAN

Debtor filed a Modified Plan and Motion to Confirm on January 25, 2022 and January 26, 2022, respectively. Dckt. 51 and 55, respectively. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 57.

The Debtor filed supplemental pleadings in support of the Motion, and the Trustee then filed a non-opposition to confirmation of the Modified Plan, stating that the Trustee supported confirmation.

The default having been addressed by confirmation of the Modified Plan, the Motion to Dismiss 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 Dismiss the Chapter 13 case 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 Motion to Dismiss is denied without prejudice.

56. **21-23262-E-13 CRG-2** **ANABEL PASCUA**
Carl Gustafson

MOTION FOR COMPENSATION BY THE LAW OFFICE OF LINCOLN LAW, LLP FOR CARL R. GUSTAFSON, DEBTORS ATTORNEY(S)
1-17-22 [22]

Final Ruling: No appearance at the March 15, 2022 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 January 18, 2022. By the court's calculation, 56 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.

Carl R. Gustafson, the Attorney ("Applicant") for Anabel Edillo Pascua, 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 4, 2021, through January 13, 2022. Applicant requests fees in the amount of $1,370.50.

TRUSTEE'S NON-OPPOSITION

On March 1, 2022, David Cusick, Chapter 13 Trustee, filed a Non-Opposition to the Application for Additional Attorney's Fees. Dckt. 32.

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 communicating with client and creditors, met with client, and prepared and filed subsequent pleadings. 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. 15. 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.

Preparation and Filing of Case: Applicant spent 3.70 hours and Paralegal spent 6.20 hours in this category. Applicant communicated and met with client, reviewed case, and reviewed debtor's documents.

Preparation for 341: Applicant spent 2.60 hours and Paralegal spent 0.50 hours in this category. Applicant communicated with client, prepared and attended 341, communicated with Trustee, and sent 521 documents to Trustee.

Necessary Case Representation: Applicant spent 0.90 hours and Paralegal spent 0.40 hours in this category. Applicant prepared fee application and reviewed confirmation order.

Confirmation of Case: Applicant spent 0.00 hours and Paralegal spent 0.50 hours in this category. Paralegal communicated with creditors.

Claims Audit and Objection: Applicant spent 0.10 hours and Paralegal spent 1.60 hours in this category. Applicant drafted, prepared, and filed objection to claim.

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
Carl Gustafson, Attorney	7.30	$425.00	$3,102.50

Katherine Arias or Karen Alvarez, Paralegal	9.20	$195.00	$1,794.00
Less the Retainer Fee Received; Dckt. 26, line 17-18			$3,526.00
Total Fees for Period of Application			$1,370.50

FEES AND COSTS & EXPENSES ALLOWED

Fees

The unique facts surrounding the case, including communicating with client and creditors, met with client, and prepared and filed subsequent pleadings, 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 $1,370.50 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.

The court authorizes the Chapter 13 Trustee under the confirmed plan to pay 100% of the fees and costs allowed by the court.

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

Fees $1,370.50

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 Carl R. Gustafson ("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 Carl R. Gustafson is allowed the following fees and expenses as a professional of the Estate:
>
> Carl R. Gustafson, Professional Employed by Anabel Edillo Pascua ("Debtor")
>
> Fees in the amount of $1,370.50,
>
> 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.