UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

April 11, 2023 at 2:00 p.m.

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1. **19-26385-E-13 MET-2** | **JAMES/MARY SHAW** | **Mary Ellen Terranella** | **MOTION TO WAIVE SECTION 1328 CERTIFICATE REQUIREMENT, CONTINUE CASE ADMINISTRATION, AS TO DEBTOR, NOTICE OF DEATH OF A DEBTOR**
3-17-23 [40]

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

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

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

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 March 17, 2023. By the court's calculation, 25 days' notice was provided. 14 days' notice is required.

The Motion to Substitute 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 Substitute is granted.

Joint Debtor, Mary Elizabeth Morris Shaw, seeks an order approving the motion to substitute Joint Debtor for the deceased Debtor, James Edward Shaw. This motion is being filed pursuant to Federal Rule of Bankruptcy Procedure 1016.

Debtor filed for relief under Chapter 13 on October 11, 2019. On January 16, 2020, Debtor's Chapter 13 Plan was confirmed. Dckt. 31. On August 22, 2022, Debtor James Edward Shaw passed away.

Pursuant to Federal Rule of Bankruptcy Procedure 1016, Joint Debtor requests authorization to be substituted in for the deceased debtor and to perform the obligations and duties of the deceased party in addition to performing her own obligations and duties. A Suggestion of Death was filed on March 17, 2023. Dckt. 40. Joint Debtor is the surviving spouse of the deceased party. Joint Debtor states that she will continue to prosecute this case in a timely and reasonable manner.

DISCUSSION

Federal Rule of Bankruptcy Procedure 1016 provides that, in the event a debtor passes away in a case "pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." Consideration of dismissal and its alternatives requires notice and opportunity for a hearing. *Hawkins v. Eads (In re Eads)*, 135 B.R. 380, 383 (Bankr. E.D. Cal. 1991). As a result, a party must take action when a debtor in Chapter 13 dies. *Id*.

Federal Rule of Bankruptcy Procedure 7025 incorporates Federal Rule of Civil Procedure 25, which provides that "[i]f a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed." *Hawkins v. Eads*, 135 B.R. at 384.

The application of Rule 25 and Rule 7025 is discussed in COLLIER ON BANKRUPTCY, 16th Edition, § 7025.02, which states:

> Subdivision (a) of Rule 25 of the Federal Rules of Civil Procedure deals with the situation of death of one of the parties. If a party dies and the claim is not extinguished, then the court may order substitution. **A motion for substitution may be made by a party to the action or by the successors or representatives of the deceased party.** There is no time limitation for making the motion for substitution originally. Such time limitation is keyed into the period following the time when the fact of death is suggested on the record. In other words, procedurally, **a statement of the fact of death is to be served on the parties in accordance with Bankruptcy Rule 7004 and upon nonparties as provided in Bankruptcy Rule 7005** and suggested on the record. The suggestion of death may be filed only by a party or the representative of such a party. The suggestion of death should substantially conform to Form 30, contained in the Appendix of Forms to the Federal Rules of Civil Procedure.
>
> The motion for substitution must be made not later than 90 days following the service of the suggestion of death. Until the suggestion is served and filed, the 90 day period

> does not begin to run. In the absence of making the motion for substitution within that 90 day period, paragraph (1) of subdivision (a) requires the action to be dismissed as to the deceased party. However, the 90 day period is subject to enlargement by the court pursuant to the provisions of Bankruptcy Rule 9006(b). Bankruptcy Rule 9006(b) does not incorporate by reference Civil Rule 6(b) but rather speaks in terms of the bankruptcy rules and the bankruptcy case context. Since Rule 7025 is not one of the rules which is excepted from the provisions of Rule 9006(b), the court has discretion to enlarge the time which is set forth in Rule 25(a)(1) and which is incorporated in adversary proceedings by Bankruptcy Rule 7025. Under the terms of Rule 9006(b), a motion made after the 90 day period must be denied unless the movant can show that the failure to move within that time was the result of excusable neglect. The suggestion of the fact of death, while it begins the 90 day period running, is not a prerequisite to the filing of a motion for substitution. The motion for substitution can be made by a party or by a successor at any time before the statement of fact of death is suggested on the record. **However, the court may not act upon the motion until a suggestion of death is actually served and filed.**
>
> The **motion for substitution together with notice of the hearing is to be served on the parties in accordance with Bankruptcy Rule 7005 and upon persons not parties in accordance with Bankruptcy Rule 7004 . . . .**

(emphasis added); *see also Hawkins v. Eads*, *supra*. While the death of a debtor in a Chapter 13 case does not automatically abate due to the death of a debtor, the court must make a determination of whether "[f]urther administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." FED. R. BANKR. P. 1016. The court cannot make this adjudication until it has a substituted real party in interest for the deceased debtor.

Local Bankruptcy Rule 5009-1(b) requires the filing with the court of Form EDC3-190 Debtor's 11 U.S.C. § 1328 Certificate. LOCAL BANKR. R. 1016-1 permits a movant, in a single motion, to request for the substitution for a representative, the authority to continue the administration of a case, and waiver of post-petition education requirement for entry of discharge. It does not allow waiver of the 11 U.S.C. § 1328 certification requirement.

Here, Mary Elizabeth Morris Shaw has provided sufficient evidence to show that administration of the Chapter 13 case is possible and in the best interest of creditors after the passing of the debtor. The Motion was filed within the ninety-day period specified in Federal Rule of Bankruptcy Procedure 1016, following the filing of the Suggestion of Death. Dckt. 40. Based on the evidence provided, the court determines that further administration of this Chapter 13 case is in the best interests of all parties, and that Joint Debtor, Mary Elizabeth Morris Shaw, as the surviving spouse of the deceased party and as the successor's heir and lawful representative, may continue to administer the case on behalf of the deceased debtor, James Edward Shaw. The court grants the Motion to Substitute Party.

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 Substitute After Death filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Mary Elizabeth Morris Shaw is substituted as the successor-in-interest to James Edward Shaw and is allowed to continue the administration of this Chapter 13 case pursuant to Federal Rule of Bankruptcy Procedure 1016.

IT IS FURTHER ORDERED that the requested waiver of 11 U.S.C. § 1328 Certification provided for the deceased Debtor James Edward Shaw is denied, as the personal representative substituted above may provide such certification..

2. **23-20790-E-13 MET-1** | **DENNIS/ROBIN COBB** **Mary Ellen Terranella** | **MOTION TO EXTEND AUTOMATIC STAY** **3-21-23 [9]**

2 thru 3

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, parties requesting special notice, and Office of the United States Trustee on March 21, 2023. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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. At the hearing, **----------**.

The Motion to Extend the Automatic Stay is granted.

Dennis Samuel Cobb and Robin Karen Cobb ("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. 18-26402-E-13C) was dismissed on February 23, 2023, after Debtor failed to cure $20,091.82 in delinquency. *See* Order, Bankr. E.D. Cal. No. 18-26402-E-13C, Dckt. 125, February 22, 2023. 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 for delinquency; however, Debtor has provided additional context as to why the delinquency occurred. Dckt. 11. Debtor states that Debtor's mother and stepfather passed away within 2 weeks of each other. *Id.* As a result, Debtor helped with funeral expenses and moving out Debtor's mother's belongings. *Id.* Additionally, in November of 2022, Debtor incurred an unexpected costly car repair expense. *Id.* Debtor, replaced the transmission within their vehicle, costing $5,800.00. Dckt. 11. Finally, during the torrential down pour in December, Debtor needed to repair a leak in their roof costing $1,200.00. *Id.*

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.

Here, Debtor has adequately laid out the context of why the previous Plan failed–unexpected financial hardships. Additionally, Debtor was roughly 8 months away from completing their previous Chapter 13 Plan, paying nearly $200,000.00; however, Debtor's were unable to cure the delinquency because it was "too far gone," totaling $20,091.82.

Debtor, now indicates that they have fully addressed their unexpected expenses, and their income is stable from their Social Security and retirement benefits. Dckt. 11. It appears that Debtor's have filed in good faith based on the fact that the previous Plan failed due to circumstances outside Debtor's control and the current proposed Plan has a high likelihood of success as a result of the stable income and the addressed previous expenses.

Debtor has sufficiently demonstrated the case was filed in good faith and rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

The Motion is granted, and the automatic stay is extended for all purposes and parties, unless terminated by operation of law or further order of this 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 Dennis Samuel Cobb and Robin Karen Cobb ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

3.	**23-20790-E-13 MET-2**	**DENNIS/ROBIN COBB Mary Ellen Terranella**	**MOTION TO VALUE COLLATERAL OF SANTANDER CONSUMER USA, INC. 3-25-23 [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 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, parties requesting special notice, and Office of the United States Trustee on March 25, 2023. By the court's calculation, 17 days' notice was provided. 14 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Santander Consumer USA, Inc. ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $4,455.00.

The Motion filed by Dennis Samuel Cobb and Robin Karen Cobb ("Debtor") to value the secured claim of Santander Consumer USA, Inc. ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 15. Debtor is the owner of a 2012 Mercedes Benz C350 ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $4,455.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

DISCUSSION

It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d

620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). As part of its burden of producing substantial evidence to rebut the presumptive validity, the objecting party bears the burden of producing substantial evidence as to the value of the collateral securing any portion of the claim. *In re Austin,* 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). 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. *Id.* 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.

While a Proof of Claim is prima facie evidence of a claim, the Creditor has the actual burden of proof on the claim if that prima facie evidence is rebutted. It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the *prima facie* validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

> "Inasmuch as Rule 3001(f) and section 502(a) provide that a claim or interest as to which proof is filed is "deemed allowed," the burden of initially going forward with the evidence as to the validity and the amount of the claim is that of the objector to that claim. In short, the allegations of the proof of claim are taken as true. If those allegations set forth all the necessary facts to establish a claim and are not self-contradictory, they *prima facie* establish the claim. Should objection be taken, the objector is then called upon to produce evidence and show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves. But the ultimate burden of persuasion is always on the claimant. Thus, it may be said that the proof of claim is some evidence as to its validity and amount. It is strong enough to carry over a mere formal objection without more."

Wright v. Holm (In re Holm), 931 F.2d 620, 623 (9th Cir. 1991) (quoting 3 L. King, Collier on Bankruptcy § 502.02, at 502-22 (15th ed. 1991)). The presumptive validity of the claim may be overcome by the objecting party only if it offers evidence of equally probative value in rebutting that offered by the proof of claim. *Holm* at 623; *In re Allegheny International, Inc.*, 954 F.2d 167, 173-74 (3rd Cir. 1992). The burden then shifts back to the claimant to produce evidence meeting the objection and establishing the claim. *In re Knize*, 210 B.R. 773, 779 (Bankr. N.D. Ill. 1997).

Debtor, as the owner of the vehicle, states their opinion as to value, concluding that it is $4,455.00. Declaration, Dckt. 15. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004). Debtor indicates that there are 175,000 miles on the Vehicle and that the Vehicle has expected wear and tear of a 11-year old car. Dckt. 15. This wear and tear includes damage to the upholstery and minor dings and dents on the outside of the Vehicle. *Id.*

The lien on the Vehicle's title secures a purchase-money loan incurred on March, 2014, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $12,000.00. Declaration, Dckt. 15. 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 $4,455.00 the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion to Value Collateral and Secured Claim filed by Dennis Samuel Cobb and Robin Karen Cobb ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Santander Consumer USA, Inc. ("Creditor") secured by an asset described as 2012 Mercedes Benz C350 ("Vehicle") is determined to be a secured claim in the amount of $12,105.22, 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 $4,455.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

4. 21-23499-E-13 MMM-1 | **JOSHUA BARON** / **Mo Mokarram** | **MOTION TO COMPROMISE CONTROVERSY / APPROVE SETTLEMENT AGREEMENT WITH FRANCISCO SALAZAR GARCIA AND JORDYN ARMOUR** **3-19-23 [20]**

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, parties requesting special notice, and Office of the United States Trustee on March 19, 2023. By the court's calculation, 23 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice).

The Motion for Approval of Compromise 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 for Approval of Compromise is ~~granted~~.

Joshua John Baron, Chapter 13 Debtor, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Francisco Salazar Garcia and Jordyn Armour ("Settlor"). The claim and/or dispute to be resolved by the proposed settlement is a personal injury claim against Francisco Salazar Garcia and Jordyn Armour..

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 25):

A. Debtor has entered into a settlement agreement involving a personal injury claim. Debtor's gross recovery will be $50,000.00.

B. Attorney fees are $16,666.66 reduced from the original $20,000.00.

C. Additional costs include $1,480.38.

D. Liens on the settlement amount include $1,500 by Optum (United health Care), and $500 by Sutter TPL.

E. The net recovery to the Debtor will be **$29,852.96**.

DISCUSSION

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

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

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

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

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

Movant argues that the four factors have been met.

However, Movant's explanation is skinny at best. Movant indicates that "[G]iven that the Debtor here has exempted the proceeds and settlement has been reached for the best interest of the parties, the factors above seem feasible." Dckt. 20. Movant has not discussed the probability of success, difficulties in collection, and expense/inconvenience/delay of continued litigation.

It is unclear to the court whether or not the Debtor may have settled for a larger amount. This court finds it questionable that California Code of Civil Procedure § 140(b)(11)(D) allows an exemption limit for personal injury claims of $29,000.00 and Debtor's recovery, after fees and liens, is $29,852.96. Only $852.96 will be going to the bankruptcy estate. Technically, this $852.96 is to the benefit of the estate; however, the Court questions the intent behind such a particular settlement amount, and whether or not Debtor has forgone the opportunity to recover more due to Debtor not being able to exempt any more.

At the hearing, XXXXXXXXXX

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because additional assets will enter the bankruptcy estate; thus, allowing creditors to potentially collect a larger sum. 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 Approve Compromise filed by Joshua John Baron, the 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 the Motion for Approval of Compromise between Movant and Francisco Salazar Garcia and Jordyn Armour ("Settlor") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion (Dckt. 25).

5. 19-26101-E-13 JUDITH HART — MOTION TO MODIFY PLAN
ADR-5 Justin Kuney — 2-22-23 [116]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on February 22, 2023. 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 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 xxxxxxx .

The debtor, Judith Beverly Hart ("Debtor") seeks confirmation of the Modified Plan because circumstances led to Debtor falling behind in Plan payments: Debtor experienced temporary increased expenses due to a family member's medical treatment and Debtor's business income decreased in most of 2021 and Debtor lost their part-time job. Debtor has been able to increase their gross business income and manage her expenses which they believe makes this Plan feasible. Declaration, Dckt. 119. The Modified Plan provides $52,706.64 to be paid through 41 months and $1,820.00 per month for months 42 through 60. Modified Plan, Dckt. 116. 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 23, 2023. Dckt. 125. Trustee opposes confirmation of the Plan on the basis that:

A. Supplemental Schedules I and J are not filed in the docket.

B. Debtor proposes to increase interest rates.

C. Amended Schedules A/B and C are not filed.

DISCUSSION

Schedule I and J not filed Separately

Although Debtor has provided a supplemental Schedule I and J as an Exhibit (Dckt. 60), Debtor has failed to file each of these documents separately on to the Court's docket. Filing a Schedule I and J as an exhibit is not sufficient for it to be considered a supplement. Debtor must file the supplemental schedules separately on the Court's docket and properly notice them to parties in interest. Federal Rule of Bankruptcy Procedure 1009(a).

Increased Interest Rate

Debtor proposes an increased interest rate of 8.75% for Class 2 (B) creditors PRA Receivables Managements and Real Time Resolutions, up from 4.75% in the confirmed plan. Trustee objects to this increase stating "interest rate is not something that is allowed in a post-confirmation modified plan." Trustee does not cite, nor does the court find, any legal authority for this contention.

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

The court agrees with the court in *Cachu* that the correct valuation of the interest rate is the prime rate in effect at the commencement of this case plus a risk adjustment. The court agrees with the Debtor's proposed interest rate as the prime rate in effect at the commencement of the case, 7.5%, plus a 1.25% risk adjustment, for a 8.75% interest rate. *See* 11 U.S.C. § 1325(a)(5)(B)(ii).

Amended Schedules A/B and C not filed

Debtor states "Amended" Schedules A/B and C were filed concurrently with the Motion to Modify Plan, but upon the courts review of the docket the "amended" schedules have not been filed. Debtor must file the Supplemental (to update for post-petition changes) schedules on the Court's docket and properly notice them to parties in interest. Federal Rule of Bankruptcy Procedure 1009(a).

~~The Modified Plan does not comply with Federal Rule of Bankruptcy Procedure 1009(a) and is not confirmed.~~

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

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

~~The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Judith Beverly Hart ("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.~~

6. **19-26101-E-13 DPC-3** **JUDITH HART** **Justin Kuney** **CONTINUED MOTION TO DISMISS CASE 1-25-23 [109]**

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, Persons who filed a Request for Notice and Office of the United States Trustee on January 25, 2023. 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 xxxxxxxxx

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

1. the debtor, Judith Beverly Hart ("Debtor"), is delinquent in plan payments.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on February 9, 2023. Dckt. 113. Debtor states she is in the process of modifying her Chapter 13 Plan and will be unable to cure her delinquency prior to the hearing date.

DISCUSSION

Delinquent

Debtor is $6,420.11 delinquent in plan payments, which represents multiple months of the $1,573.55 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtor, a promise to file a modified plan is not evidence that resolves the Motion.

The Debtor has filed a Modified Plan and Motion to Confirm. The Trustee concurred in the request for a continuance.

April 5, 2023 Hearing

No status report has been filed prior to the hearing. However, the hearing on the Motion to Confirm the Modified Plan is set for hearing on April 11, 2023. Notice, Dckt. 117.

Debtor has filed a Modified Plan (Dckt. 118) and Motion to Confirm (Dckt. 116) to address the defaults. From the court's preliminary review, it appears that the Motion states grounds with particularity upon which relief is based and that the Declaration in support (Dckt. 119) states personal knowledge testimony in support of the Motion to Confirm.

However, the Trustee has filed an opposition to the Motion to Confirm.

In light of the hearing on the Motion to Confirm being less than one week after this hearing and the Opposition having been filed by the Chapter 13 Trustee, the court continues the hearing on the Motion to Dismiss to be heard in conjunction with the Motion to Confirm.

April 11, 2023 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 Motion to Dismiss is xxxxxxxxx

7. 23-20306-E-13 EAT-1 | **SHIRLEY COOPER** **Mikalah Liviakis** | **OBJECTION TO CONFIRMATION OF PLAN BY BARCLAYS MORTGAGE TRUST 2021-NPL1** **3-8-23 [18]**

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the 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 March 8, 2023. 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 overruled.

Barclays Mortgage Trust 2021-NPL1 ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

A. the Plan does not cure arrears.

B. Debtor's monthly net income is insufficient to support the plan.

DEBTOR'S RESPONSE

The debtor, Shirley Marea Cooper ("Debtor"), filed a Response on March 23, 2023. Dckt. 21. Debtors states that the issues raised have been resolved via the proposed order confirming plan attached as Exhibit A. Dckt. 21.

Debtor provides for the following amended treatment of Creditor's secured claim:

Class 1 Creditor's Name Gregory Funding LLC / BARCLAYS MORTGAGE TRUST 2021-NPL1, MORTGAGE-BACKED SECURITIES, SERIES 2021-NPL1, BY U.S. BANK NATIONAL ASSOCIATION, AS INDENTURE TRUSTEE Collateral Description 4053 Sea Meadow Way Sacramento, CA 95823 Sacramento County

Amount of Arrears: $34,729.28

Interest Rate on Arrears: 0.00%

Arrearage Dividend: $950 (starting month 6)

Post-Petition Monthly Payment: $1,762.68

Debtor's proposed amendment addresses the issues brought forth by the Creditor.

At the hearing, XXXXXXXXXX

The Creditor's 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 the Barclays Mortgage Trust 2021-NPL1 ("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 is overruled, and Shirley Marea Cooper ("Debtor") Chapter 13 Plan filed on January 1, 2023, which is amended to provide for Creditor's Claim:

Class 1 Creditor's Name Gregory Funding LLC / BARCLAYS MORTGAGE TRUST 2021-NPL1, MORTGAGE-BACKED SECURITIES, SERIES 2021-NPL1, BY U.S. BANK NATIONAL ASSOCIATION, AS INDENTURE TRUSTEE Collateral Description 4053 Sea Meadow Way Sacramento, CA 95823 Sacramento County

Amount of Arrears: $34,729.28

Interest Rate on Arrears: 0.00%

Arrearage Dividend: $950 (starting month 6)

Post-Petition Monthly Payment: $1,762.68;

which are stated in the proposed order submitted as Exhibit A (Dckt. 22), is confirmed. Counsel for Debtor shall submit 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.

8. 22-21817-E-13 DPC-1 | **GARY SPARKS** **Mary Ellen Terranella** | **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **9-7-22 [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)©.

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 September 9, 2022. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is xxxxx .

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

1. Debtor failed to appear at the First Meeting of Creditors and the meeting was continued to October 6, 2022, and

2. The Plan is not feasible, nor does Debtor appear to be able to comply with the Plan.

   a. Debtor's budget is unrealistic. Schedule J does not reflect any expenses for a vehicle or medical insurance;

   b. Debtor failed to file tax returns;

   c. Debtor fails to provide for the full claims of the Internal Revenue Service ("IRS") and Franchise Tax Board ("FTB");

   d. Including the IRS and FTB's claims would cause completion of the Plan to take approximately 85 months.

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).

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). Trustee asserts that Debtor is self-employed, earning a net monthly income of $6,933.00, but Debtor's Schedule J does not reflect medical insurance or vehicle expenses. Debtor has failed to explain the lack of expense for these items. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Failure to File tax returns

The IRS and FTB's claims indicate tax returns were not filed for numerous years prior to filing for bankruptcy. Trustee's declaration asserts that Trustee has only received Debtor's 2013 tax return, to date. Declaration, Dckt. 15, filed on September 7, 2022. Filing of the return is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Failure to Provide for a Secured Claim

Debtor's Plan does not provide for the secured claim of FTB. Additionally, there is no indication Debtor plans to provide for FTB outside of the Plan. FTB may request relief from stay which could impact Debtor's ability to finance the Plan.

Failure to Provide for a Priority Claim

Trustee asserts that the IRS filed a claim with a priority amount of $81,063.29 in priority unsecured debt but Debtor only estimated and scheduled the IRS as priority for $30,000.00, and $25,544.00 as unsecured nonpriority. Proof of Claim 9-1, filed on August 29, 2022. The Plan does not provide for all priority debt as required by 11 U.S.C. § 1322(a)(2).

Plan Term is More than 60 Months

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 85 months due to proofs of claims filed by the IRS and Franchise Tax Board. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

DECEMBER 13, 2022 HEARING

The Chapter 13 Trustee filed a Status Report on December 5, 2022. Dckt. 21. The Trustee reports that the Meeting of Creditors has been completed. However, at the December 1, 2022 Meeting of Creditors, the Debtor stated that he had not yet filed his tax returns, and the Meeting of Creditors has been continued to January 26, 2023.

At the hearing, counsel for the Debtor reported that Debtor attended the First Meeting of Creditors and is working on his tax returns (needing to get additional records from his bank). The First Meeting has been continued to January 2023.

The Trustee reported that the Debtor is current on Plan payments Trustee reported and concurs with there being a continuance of the hearing on this Objection.

FEBRUARY 13, 2023 HEARING

The Trustee's February 9, 2023 Docket Entry Report states that the First Meeting of Creditors has now been concluded.

However, on January 30, 2023, the Chapter 13 Trustee filed a Motion to Dismiss this Bankruptcy Case. Dckt. 26. The grounds stated in the Motion are:

a. Debtor is delinquent $9,538.38 in Plan payments (2 months).

b. The Tax Returns have not yet been provided.

c. The Internal Revenue Service proof of claim states that tax returns have not been filed by Debtor for the 2016 to 2022 tax years. The California Franchise Tax Board proof of claims states that State tax returns have not been filed for the same period. State tax obligations are not provided for in the Plan.

At the hearing, counsel for the Trustee believes that all issues have been resolved, except that the over extension. Counsel for Debtor reports that the 2016 through 2022 tax returns have been filed, and it is anticipated that the taxing agencies will be amending their claims.

The Parties agreed to a further continuance to allow the taxing agencies to see the returns and amend the claims.

TRUSTEE'S STATUS REPORT

Trustee filed a Status Report on April 4, 2023. Dckt. 40. Trustee states the IRS and FTB still have not amended their proofs of claim, and thus, the Plan is still overextended.

DEBTOR'S STATUS REPORT

Debtor filed a Status Report on April 4, 2023. Dckt. 42. Debtor states they have communicated with the IRS and FTB and expect them to amend their proofs of claims prior to the hearing.

APRIL 11, 2023 HEARING

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 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** the Objection to Confirmation of Plan is **XXXXX**

9. 18-27024-E-13 RWH-2 PEDRO/GAUDENCIA AMBALONG Ronald Holland MOTION FOR HARDSHIP DISCHARGE 3-17-23 [60]

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 that have filed claims and Office of the United States Trustee on March 17, 2023. By the court's calculation, 25 days' notice was provided. 14 days' notice is required.

The Motion for Entry of Hardship Discharge 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 for Entry of Hardship Discharge is granted.

Jody Ambalong ("Representative"), successor in interest to debtors, moves for entry of a hardship discharge on the grounds that debtors are deceased and the Representative has been substituted as the representative for te Debtors. The confirmed plan in this case was filed on November 6,2018 and $106,462.41 have been paid in to the plan since. Declaration, Dckt .63. The plan provides for 1% to unsecured creditors. Plan, Dckt. 4. Representative argues:

A. Debtors' failure to complete payments is due to the circumstances that the Debtors are now deceased.

B. The value of property distributed to unsecured claim is not less than that of a Chapter 7 liquidation. The Debtors had no non-exempt assets, so no unsecured claims would have received a distribution under chapter 7. Declaration, Dckt. 63.

C. Modification of Plan is not practicable now that Debtors are deceased.

Dckt. 60.

TRUSTEE'S NONOPPOSITION

Trustee filed a nonopposition on March 27, 2023. Dckt. 65. Trustee states they do not oppose Debtor's Motion in that $0 of non-exempt equity exists, Debtors are deceased, and modification appears impracticable.

APPLICABLE LAW

Section 1328(b) of the Bankruptcy Code states:

> Subject to subsection (d), at any time after the confirmation of the plan and after notice and a hearing, the court may grant a discharge to a debtor that has not completed payments under the plan only if–
>
> > (1) the debtor's failure to complete such payments is due to circumstances for which the debtor should not justly be held accountable;
> >
> > (2) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 of this title on such date; and
> >
> > (3) modification of the plan under section 1329 of this title is not practicable.

The provisions of 11 U.S.C. § 1328(b) are written conjunctively and must all be satisfied to grant a hardship discharge. *See, e.g.*, *In re Cummins*, 266 B.R. 852, 855 (Bankr. N.D. Iowa 2001). Debtor has the burden or proving each of those elements. *Spencer v. Labarge (In re Spencer)*, 301 B.R. 730, 733 (B.A.P. 8th Cir. 2003). "Unsubstantiated and conclusory statements" about a debtor's inability to afford plan payments anymore are insufficient when considering a motion for a hardship discharge. *See, e.g.*, *In re Dark*, 87 B.R. 497, 498 (Bankr. N.D. Ohio 1988).

Some courts have looked for a catastrophic event to justify a hardship discharge, but others have relied upon the plain meaning of 11 U.S.C. § 1328(b) to determine whether a "debtor is justly accountable for the plan's failure." *In re Bandilli*, 231 B.R. 836, 840 (B.A.P. 1st Cir. 1999). Determining whether a debtor is justly accountable is fact-driven, and some considerations include:

A. Whether the debtor has presented substantial evidence that he or she had the ability and intention to perform under the plan at the time of confirmation;

B. Whether the debtor did materially perform under the plan from the date of confirmation until the date of the intervening event or events;

C. Whether the intervening event or events were reasonably foreseeable at the time of confirmation of the Chapter 13 plan;

D. Whether the intervening event or events are expected to continue in the reasonably foreseeable future;

E. Whether the debtor had control, direct or indirect, of the intervening event or events; and

F. Whether the intervening event or events constituted a sufficient and proximate cause for the failure to make the required payments.

Id.

At least one court has found that an economic hardship (i.e., lost business revenue and increased expenses) is not the kind of event "such as death or disability which prevent[s] a debtor, through no fault of his or her own, from completing payments." *In re Nelson*, 135 B.R. 304, 306 (Bankr. N.D. Ill. 1991).

Sub-section 11 U.S.C. § 1328(b)(1) "requires that the circumstances leading to the debtor's failure to make payments be beyond the debtor's control." *In re Cummins*, 266 B.R. at 855. Such aggravating circumstances need to be "truly the worst of the awfuls—something more than just the temporary loss of a job or a temporary physical disability." *In re Nelson*, 135 B.R. at 307 (citation omitted).

The second portion of 11 U.S.C. § 1328(b) requires that unsecured claims receive no less than they would have through Chapter 7 liquidation. That is called the "best interests" test that is identical to Chapter 13 plan confirmation in 11 U.S.C. § 1325(a)(4). *In re Cummins*, 266 B.R. at 856 (citations omitted). If an unsecured claim would not receive a distribution through Chapter 7, then any payment from a Chapter 13 plan satisfies that requirement. *Id.* (citing *In re Nelson*, 135 B.R. at 308).

Finally, 11 U.S.C. § 1328(b)(3) requires that modifying the Chapter 13 plan not be practicable. Proposing a modified plan "is not 'practicable' if there is no source of income to fund the modified plan." *Id.* (citing *In re Bond*, 36 B.R. 49, 51 (Bankr. E.D.N.C. 1984)).

The Ninth Circuit has instructed that "[n]othing in the Code compels a bankruptcy court to close, rather than dismiss, a Chapter 13 case when a debtor fails to complete [a] plan." *HSBC Bank USA, N.A. v. Blendheim (In re Blendheim)*, 803 F.3d 477, 496 (9th Cir. 2015). Furthermore, "the availability of case closure does not eliminate a bankruptcy court's duty to ensure that a debtor complies with the Bankruptcy Code's 'best interests of creditors' test, 11 U.S.C. § 1325(a)(4), and the good faith requirement for confirming a Chapter 13 plan." *Id.* The Ninth Circuit found explicitly that a "bankruptcy court [had] properly conditioned permanent lien-voidance upon the successful completion of the Chapter 13 plan payments. If the debtor fails to complete the plan as promised, the bankruptcy court should either dismiss the case or, to the extent permitted under the Code, allow the debtor convert to another chapter." *Id.*

DISCUSSION

The Representative has demonstrated to the court that the elements of 11 U.S.C. § 1328(b) have been met. While some courts have required that a debtor face a catastrophe, that is not a requirement. In this case, however, there has been a significant hardship in Debtors' lives that prevents Debtors from complying with and completing the Plan. The Motion is granted, and a hardship discharge under 11 U.S.C. § 1328(b) is entered for Debtors 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 Hardship Discharge filed by JodyAmbalong ("Representative") having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and the court shall enter a "hardship" discharge pursuant to 11 U.S.C. § 1328(b) for Pedro Bulahan Ambalong and Gaudencia Lomosad Ambalong in this case based on the Plan as performed as of the April 11, 2023 hearing date on this Motion.

10. 18-25525-E-13 PSB-2 | **TRACY HASTINGS** **Paul Bains** | **MOTION FOR COMPENSATION BY THE LAW OFFICE OF BAINS LEGAL, PC FOR PAULDEEP BAINS, DEBTORS ATTORNEY(S)** **3-9-23 [64]**

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, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 9, 2023. By the court's calculation, 33 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00).

The Motion for Allowance of Professional Fees 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 for Allowance of Professional Fees is ~~granted~~.

Pauldeep Bains, the Attorney ("Applicant") for Tracy Allison Hastings, the Chapter 13 Debtor ("Client"), makes a Second and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period October 15, 2021, through September 15, 2023. The order of the court approving employment of Applicant was entered on December 13, 2020. Dckt. 49. Applicant requests fees in the amount of $438.08.

Trustee's Response

Chapter 13 Trustee David P. Cusick ("Trustee") filed a response on March 20, 2023. Dckt. 69. Trustee states it will take approximately 2-3 additional months to pay the case in full, with the additional attorney compensation paid through the plan.

At the hearing, XXXXXXXXXX

~~**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 general case administration and this current motion for compensation. 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.

General Case Administration: Applicant spent 3.9 hours in this category. Applicant communicated with Debtor and attorneys, and reviewed documents for the case.

Motion for Compensation: Applicant spent 1.0 hours in this category. Applicant prepared the pending Motion for Compensation.

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	4.9	$325.00	$1,592.50
Total Fees for Period of Application			$1,592.50

However, Applicant is discounting their fees and only requesting fees for this period in the amount of $438.08.

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	$1,805.50	$1,805.50
Total Interim Fees Approved Pursuant to 11 U.S.C. § 331	$1,805.50	

FEES ALLOWED

Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. Second and Final Fees in the amount of $438.08 and prior Interim Fees in the amount of $1,805.50 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

The court authorizes the Chapter 13 Trustee to pay 100% of the fees allowed 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 for Allowance of Fees and Expenses filed by Pauldeep Bains ("Applicant"), Attorney for Tracy Allison Hastings, 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 Pauldeep Bains is allowed the following fees and expenses as a professional of the Estate:

Pauldeep Bains , Professional employed by the Chapter 13 Debtor

Fees in the amount of $438.08

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

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

11.	**21-20225-E-13** **BHS-3**	**DONALD JOHNSON** **Michael Hays**	**MOTION FOR COMPENSATION FOR BARRY H. SPITZER, TRUSTEES ATTORNEY(S)** **2-22-23 [183]**
	11 thru 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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 22, 2023. By the court's calculation, 48 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 hearing on the Motion for Allowance of Professional Fees is continued to xx:xx x.m. on xxxx, 2023.

Barry H. Spitzer, the Attorney ("Applicant") for Nikki Farris, the former Chapter 7 Trustee in this case ("Client"), prior to Chapter 13 conversion, makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period December 23, 2021, through February 22, 2023. The order of the court approving employment of Applicant was entered on January 10, 2022. Dckt. 93. Applicant requests fees in the amount of $9,562.50 and costs in the amount of $24.72.

Trustee's Nonopposition

The Chapter 13 Trustee, David P. Cusick, ("Chapter 13 Trustee") filed a nonopposition on March 27, 2023, Dckt. 203, indicating the services were needed and the fees are reasonable.

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 reviewing court files, corresponding with a assisting the Trustee, and advising the Trustee of conversion to Chapter 13. The court finds the services were beneficial to Client and the Estate and were reasonable.

NO TASK BILLING

The court finds helpful, and in most cases essential, for professionals to provide a basic task billing analysis for the services provided and fees charged. This has long been required by the Office of the U.S. Trustee, and it is nothing new for professionals in this District. The task billing analysis requires only that the professional organize his or her task billing. The simpler the services provided, the easier it is for Applicant to quickly state the tasks. The more complicated and difficult to discern the tasks from the raw billing records, the more evident it is for Applicant to create the task billing analysis to provide the court, creditors, and U.S. Trustee with fair and proper disclosure of the services provided and fees being requested.

Included in the Motion is Applicant's raw time and billing records, which have not been organized into categories. Rather than organizing the activities that are best known to Applicant, it is left for the court, U.S. Trustee, and other parties in interest to mine the records to construct a task billing. The court declines the opportunity to provide this service to Applicant, instead leaving it to Applicant who intimately knows the work done and its billing system to correctly assemble the information. FN.1.

FN.1. The requirement for a task billing analysis is not new to this district and was required well before the modern computer billings systems. More than twenty years ago a bright young associate (not the present judge) developed a system in which he used different color highlighters to code the billing statements for the time period for the fee application. General administrative matters were highlighted in yellow, sales of

property in green, adversary proceedings in red, and so on. Subsequently, the billing procedure advanced so that each adversary proceeding was provided a separate billing number so that it would generate a separate billing. Within the bankruptcy case billing number, the time entries were given a code on which the billing system could sort the entries and automatically produce a billing report that separates the activities into the different tasks.

The court also note that while the Memorandum of Points and Authorities is rich in stating grounds upon which the requested relief is based, the Motion is devoid of any grounds upon which the court may grant the relief. Motion, Dckt. 183. See Federal Rule of Bankruptcy Procedure 9013 requiring that the grounds be stated in the motion.

The court continues the hearing, rather than denying the Application without prejudice, to afford Applicant the opportunity to provide the court, U.S. Trustee, and other parties in interest requesting the information with the necessary task billing analysis.

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 Professional Fees filed by Barry H. Spitzer, the Attorney for Nikki Farris, the former Chapter 7 Trustee in this case ("Client") having been presented to the court, no task billing analysis having been provided in support of the Application, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Motion for Allowance of Professional Fees is continued to xx:xx x.m. on xxxx, 2023. Applicant shall file a supplemental declaration and supporting documents as necessary, to provide the court, U.S. Trustee, and other parties in interest requesting copies of such supplemental pleadings, with an explanation of the fees requested and a task billing analysis that specifically groups the time and charges by the various task areas for such services.

12. 21-20225-E-13 BHS-4 | **DONALD JOHNSON** Michael Hays | **MOTION FOR COMPENSATION FOR NIKKI FARRIS, CHAPTER 7 TRUSTEE(S)** **2-22-23 [190]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 22, 2023. By the court's calculation, 48 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 hearing on the Motion for Allowance of Professional Fees is continued to xx:xx x.m. on xxxx, 2023.

Nikki Farris, the former Chapter 7 Trustee ("Applicant"), prior to the case being converted to Chapter 13, makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period January 29, 2021, through October 17, 2022. Applicant requests fees in the amount of $11,396.00 and costs in the amount of $1,138.25.

In the Motion, the grounds stated with particularity include (identified by the paragraph number used in the Motion):

3. The duties performed by the Trustee included: (1) setting up the Trustee's documentation upon being assigned this case; (2) reviewing the Petition, Schedules, and related pleadings; (3) reviewing the case with the Trustee's attorney; (4) reviewing other documents provided; (5) reviewing the 521 documents, and (6) preparing for and conducting the First Meeting of Creditors.

4. The Trustee also investigated matters relating to: (1) claims of Debtor's former spouse; (2) investigation of the Acton property and arranging for employment of a real estate broker for the marketing and sale of such property; and (3) settlement of the PG&E lawsuit claim resulting from the Paradise fire.

4. The Trustee advanced $1,100 of her own funds for work done to the Acton Property that was necessary for the marketing and sale of that Property. Due to the lack of cooperation by Debtor, the Trustee and her counsel had to spend extra time working on the sale. Additionally, multiple offers were generated by the marketing of the property and a sale was pending at the time the case was converted to one under Chapter 13.

5. The administration of the Bankruptcy Estate assets, including the Trustee's investigation, resulted in a 100% dividend to all creditors in this case. The court's order converting this case provides that the Trustee's fees and costs are awarded as a second priority distribution from the initial distribution from the Fire Victims Trust.

P. 3:4-13. The Trustee provides her time records to document fees of $11,396.00 and expenses of 1,138.25. The Trustee seeks compensation for 35.25 hours of work on this case, with an hourly rate of $235.

Dckt. 190.

The Trustee's Declaration, Dckt. 193, provides some conclusory statements about the services provided and that in this case there will be a 100% dividend paid to all creditors (but does not state how much that distribution will be). The Trustee also does not authenticate the time records filed as A, Dckt. 192.

An unauthenticated Exhibit A is identified as the billing and expense records of the Trustee. Dckt. 192. All of the entries are in chronological order. No task billing analysis or summary is provide either in the Motion, Declaration, or as part of Exhibit A.

Chapter 13 Trustee's Nonopposition

The Chapter 13 Trustee, David P. Cusick, ("Chapter 13 Trustee") filed a nonopposition on March 27, 2023, Dckt. 208, indicating the services were needed and the fees are reasonable.

APPLICABLE LAW

Reasonable Fees

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the professional'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 professional 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 a professional are "actual," meaning that the fee application reflects time entries properly charged for services, the professional must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. A professional] must exercise good billing judgment with regard to the services provided because the court's authorization to employ a professional to work in a bankruptcy case does not give that professional "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 general trustee duties. The court finds the services were beneficial to Client and the Estate and were reasonable.

NO TASK BILLING
OR FEE CAP COMPUTATION
PROVIDED

The court finds helpful, and in most cases essential, for professionals to provide a basic task billing analysis for the services provided and fees charged. This has long been required by the Office of the U.S. Trustee, and it is nothing new for professionals in this District. The task billing analysis requires only that the professional organize his or her task billing. The simpler the services provided, the easier it is for Applicant to quickly state the tasks. The more complicated and difficult to discern the tasks from the raw billing records, the more evident it is for Applicant to create the task billing analysis to provide the court, creditors, and U.S. Trustee with fair and proper disclosure of the services provided and fees being requested.

Included in the Motion is Applicant's raw time and billing records, which have not been organized into categories. Rather than organizing the activities that are best known to Applicant, it is left for the court, U.S. Trustee, and other parties in interest to mine the records to construct a task billing. The court declines the opportunity to provide this service to Applicant, instead leaving it to Applicant who intimately knows the work done and its billing system to correctly assemble the information. FN.1.

FN.1. The requirement for a task billing analysis is not new to this district and was required well before the modern computer billings systems. More than twenty years ago a bright young associate (not the present judge) developed a system in which he used different color highlighters to code the billing statements for the time period for the fee application. General administrative matters were highlighted in yellow, sales of property in green, adversary proceedings in red, and so on. Subsequently, the billing procedure advanced so that each adversary proceeding was provided a separate billing number so that it would generate a separate billing. Within the bankruptcy case billing number, the time entries were given a code on which the billing system could sort the entries and automatically produce a billing report that separates the activities into the different tasks.

For some compensation motions, such as when there has been basically one or two activities undertaken and they are clearly identified, an analysis may not be required. Here, it appears that there are a number of administrative items; investigatory activities; document review; employment of and working with the real estate broker, as well as Trustee's counsel for the preparation, marketing and sale of the Property; and the conversion of this case. While ($11,393) in fees is modest, it is a significant number for which the fees for these basic task activities need to be broken out.

<u>Claims in this Case</u>

Congress provides in 11 U.S.C. § 326 that the reasonable compensation paid to a trustee may not exceed specified percentages of the monies disbursed to parties in interest, excluding the debtor, and including secured claims. The Trustee does not provide the court an short analysis of whether the $11,396.00 limitations imposed by Congress. The Trustee does not provide the court with the disbursement amounts projected in this case so the court could easily make that computation, the Trustee having failed to so do.

There are two proofs of claim filed in this case (the third proof of claim having been withdrawn by the Internal Revenue Service):

POC 1-2, Creative Judgment Solutions
($62,012.79) Secured Claim
Personal Injury Judgment
Abstract of Judgment Filed

POC 2-1, Caraly Johnson (ex-spouse of Debtor)
($228,125.72) General Unsecured Claim
To be resolved in State Court

In addition to the above, from the court approved $355,000 sale of the Acton Property, from which there is a 5% commission that is being paid from the Estate Proceeds, as well as the costs of sale. This is an additional ($17,750). Order; Dckt. 203.

The court has also allowed ($16,870) in fees for the Trustee's prior counsel. Order, Dckt. 113. The Trustee's current Counsel is requested the allowance of an additional ($12,534.25) in fees.

If the court excludes the disputed ($228,125) claim of Debtor's Ex-Spouse and includes the $12,534.25 in fees for the Trustee's current counsel, there would be at least $109,166 of disbursements to parties in interest. This does not include the additional $11,393 in Trustee's fees requested, which increases the distributions to parties in interest to ($120,559).

Using the mathematical formula for the trustee fee cap established by Congress in 11 U.S.C. § 326 and the ($120,559) claim and fee amounts, the Trustee fee cap would be:

25% of the first $5,000 disbursed.....$1,250.00
10% of the next $45,000 disbursed.....$4,500.00
5% of the balance of $70,559 disbursed.....$3,527.95
========

Fee Cap, Excluding Ex-Spouse's Claim.....$9,277.95

To get to the $11,393 in fees requested, an additional $2,115 in fees, with a 5% cap limit, there would need to be an additional ($42,300) in claim disbursement to be made. That would be an amount equal to 18.5% of Debtor's Ex-Spouse's claim which dispute will be adjudicated in State Court.

Looking at the component parts of Proof of claim 2-1, it is not unreasonable to estimate that at lease 18.5% would be recovered for purposes of computing the Chapter 7 Trustee's cap. By electing to have

the Ex-Spouse's claim adjudicated in State Court does not work to deprive the Trustee of fair and reasonable fees in this case for her work in what has resulted in a 100% dividend case.

Thus, the court concludes that the $11,393 in fees requested is within the fee cap of 11 U.S.C. § 326.

Continuance of Hearing

Unfortunately, it is necessary to continue this hearing in light of the court being presented with unauthenticated exhibits. Additionally, since the Trustee is having to provide a supplemental declaration to authenticate the exhibits (as required by the Federal Rules of Evidence), the Trustee can also provide the court with a task billing analysis.

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 Professional Fees filed by Nikki Farris, the former Chapter 7 Trustee in this case ("Applicant") having been presented to the court, no task billing analysis having been provided in support of the Application, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Motion for Allowance of Professional Fees is continued to xx:xx x.m. on xxxx, 2023. Applicant shall file a supplemental declaration and supporting documents as necessary, to provide the court, U.S. Trustee, and other parties in interest requesting copies of such supplemental pleading to: (1) authenticate the exhibits upon which the requested relief is based, and (2) an explanation of the fees requested and a task billing analysis that specifically groups the time and charges by the various task areas for such services.

13. 21-20225-E-13 BHS-5 | **DONALD JOHNSON** Michael Hays | **MOTION FOR COMPENSATION FOR CHRISTIE LIMPUS-HATHAWAY, REALTOR(S)** **2-28-23 [195]**

Final Ruling: No appearance at the April 11, 2023 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 and parties in interest, parties requesting special notice, and Office of the United States Trustee on February 28, 2023. By the court's calculation, 42 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.

Christie Limpus-Hathaway, the Real Estate Broker ("Applicant") for Nikki Farris, the former Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

The order of the court approving employment of Applicant was entered on November 18, 2021. Dckt. 85. Applicant requests fees in the amount of $8,000.00, which is roughly 3% of the $280,000.00 sale price of the real property commonly known as 35501 Brinville Road, Acton, California ("Property"), less a concession for not having to perform post-contract acceptance work for the sale.

Trustee's Nonopposition

David Cusick, Chapter 13 Trustee, ("Trustee") filed a non-opposition on March 27, 2023. Trustee does not oppose the motion and believes the services were needed and the fees are reasonable.

APPLICABLE LAW

Reasonable Fees

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the professional'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 professional 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 a professional are "actual," meaning that the fee application reflects time entries properly charged for services, the professional must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. professional must exercise good billing judgment with regard to the services provided because the court's authorization to employ a professional to work in a bankruptcy case does not give that professional "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 marketing and showings of the Property and presenting of buyers to the Chapter 7 Trustee. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

The court finds that the fees computed on a percentage basis recovery for Client are reasonable and a fair method of computing the fees of Applicant in this case. Such percentage fees are commonly charged for such services provided in non-bankruptcy transactions of this type. The court allows Final Fees of $8,000.00 pursuant to 11 U.S.C. § 330 for these services provided to Client by Applicant. The Chapter 13 is authorized to pay from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 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 Christie Limpus-Hathaway ("Applicant"), Real Estate Broker for Nikki Farris, the former Chapter 7 Trustee, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Christie Limpus-Hathaway is allowed the following fees and expenses as a professional of the Estate:
>
> Christie Limpus-Hathaway, Professional employed by the former Chapter 7 Trustee
>
> Fees in the amount of $8,000.00,
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the former Chapter 7 Trustee.

IT IS FURTHER ORDERED that the Chapter 13 Trustee is authorized to pay 100% of the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 case.

14. 23-20328-E-13 DBJ-1 | **LEAH HARRINGTON** **Michael Hays** | **OBJECTION TO CONFIRMATION OF PLAN BY TRI COUNTIES BANK** **3-21-23 [16]**

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)©.

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, creditors, parties requesting special notice, and Office of the United States Trustee on March 22, 2023. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is xxxxxxx .

Tri Counties Bank ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

A. Debtor does not provide for payment to the secured claim.

DISCUSSION

Creditor's objections are well-taken.

Listing Creditor as a Class 2 Claim

Creditor's Objection states they hold a secured claim on the real property commonly known as 2598 Forestview Drive, Oroville, California ("Property"). Objection, Dckt. 16 ¶ 2. Creditor has not yet filed a proof of claim, but they assert their claim is $4,285.13 in pre-petition delinquency and a total claim of $15,316.86. *Id.* ¶ 3. Creditor provided properly authenticated exhibits evidencing their interest in the Property. Exhibits, Dckt. 18.

Debtor's Schedule D lists Creditor as holding a secured claim in the amount of $20,722.87. Debtor's Plan provides for Creditor as a Class 2 claim, however, Debtor's nonstandard provisions dispute the validity of Creditors claim. Debtor states their deceased ex-spouse encumbered their Property with Creditor's claim, without Debtor's "knowledge, signature, or consent . . . ." Plan, Dckt. 9 § 7. The nonstandard provisions indicate Debtor will not provide any payments to Creditor until Creditor puts forth a valid Proof of Claim. If Creditor puts forth a valid proof of claim, Debtor states they will increase their payment to provide for that claim.

It appears Debtor is disputing the validity of Creditor's claim. Listing Creditor as a Class 2 claim is not the proper bankruptcy tool for disputing the validity of the claim. The provisions of the Plan clearly states Class 2 claims are those to be paid in full. There are other bankruptcy tools that Debtor can use to challenge Creditor's claim. Listing Creditor as a Class 2 claim is improper.

Debtor could provide for setting up a blocked account into which payments on the disputed claim are made monthly, with no monies to be disbursed except upon the court's order on a diligently prosecuted objection to claim becoming final.

However, Debtor's plan does not do such, but instead revises the Bankruptcy Code to provide that the claim will not be paid, notwithstanding Debtor confirming a plan, until the Debtor allows Creditor's claim.

Stipulation

On April 6, 2023, a Stipulation between Debtor and Tri Counties Bank, Creditor, was filed, in which the Parties agree:

1. Creditors claim is a Class 2 Claim.

2. Monthly payments on the Class 2 Claim of $164 a month for the first two months of the plan, and $295.17 a month commencing in month 3 and continuing through the term of the Plan to provide for payment in full of the Class 2 Claim.

3. The Class 2 Claim is $15,216.86, and is being repaid through the Plan with 5.25% interest.

Stipulation, Dckt. 32.

The above amendment will be stated in the Order confirming the Chapter 13 Plan.

Debtor's Opposition to Stipulation

Though Debtor's Counsel has filed a Stipulation signed by himself and counsel for Tri Counties Bank, the Debtor has filed a handwritten opposition. Dckt. 35. (The opposition has the Docket Control Number for the Request to File a Late Objection to Confirmation, but goes to whether Creditors has a claim secured by Debtor's property.) In it she states that he and the borrower from Tri Counties Bank were divorced in 1988. Debtor says that she never gave Tri Counties Bank a lien on the Property and was never contacted by Tri Counties Bank.

No proof of claim has been filed by Tri Counties Bank. Exhibit A filed by Tri Counties Bank, Dckt. 18, has a recording date of 2006, which is almost a decade after the date of divorce stated by Debtor. The Deed of Trust states that Richard D. Graeff is a married man. The spouse is not identified in the Deed of Trust. It further states that the Property is the sole and separate property of Richard D. Graeff. Only Richard D. Graeff has signed the Deed of Trust.

Tri Counties Bank provides the Note that is secured by the Deed of Trust as Exhibit B. *Id*. Only Richard D. Graeff has signed the Note.

At the hearing, **xxxxxxx**

~~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 Tri Counties Bank ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

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

15. 21-21429-E-13 DNL-6

JAMIE HOWELL
Stacie Power

15 thru 16

MOTION FOR COMPENSATION BY THE LAW OFFICE OF DESMOND, NOLAN, LIVAICH & CUNNINGHAM FOR J. RUSSELL CUNNINGHAM, TRUSTEES ATTORNEY(S)
3-7-23 [204]

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 March 7, 2023. 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 xxxxxxx .

Nikki Farris, the former Chapter 7 Trustee, prior to the case converting to Chapter 13, ("Applicant") makes a First and Final Request for the Allowance of Fees and Expenses in this case for services provided by Desmond, Nolan, Livaich, & Cunningham ("DNLC").

Fees are requested for the period December 22, 2021, through November 3, 2022. The order of the court approving employment of DNLC was entered on January 4, 2022. Dckt. 70. Applicant requests fees to be approved to pay DNLC in the amount of $20,215.50 and costs in the amount of $520.92.

Trustee's Nonopposition

Chapter 13 Trustee, David P. Cusick ("Chapter 13 Trustee"), filed a nonopposition on March 15, 2023, Dckt. 215, stating they do not oppose compensation for DNLC, and that the services performed were needed and reasonable.

Debtor's Opposition

The debtor, Jamie Howell ("Debtor"), filed an opposition to the Motion on March 27, 2023. Dckt. 221. Debtor states the fees are not reasonable, much of the work was duplicative of work performed by other professionals, and the work did not benefit the estate. Debtor states:

1. Prior attorney's fees to Chapter 7 Trustee's Counsel:

    a. Applicant's prior counsel, Loris Bakken, had already received an award of attorney's fees in the amount of $10,430.

2. Different billing rates:

    a. The application to employ DNLC was "fraught with deception." The original application had lower billing rates than what the attorneys billed for. If Debtor knew DNLC would increase their billing, they would have objected to the employment.

3. Duplicative work:

    a. DNLC is billing for assessing the property and homestead, and preparing the property for marketing by the broker. However, any time spent on this would be minimal as arrangements were never made for the broker to see the property. Additionally, DNLC is billing for time spent on turnover of the property, however, this is what the real estate broker should have been employed for.

4. Not a benefit to estate:

    a. 1.2 hours of DNLC's billed "case administration" was spent communicating regarding substitution and case status. Debtor argues this did not benefit the estate and time should not be charged informing a new attorney on the status of the case.

5. Duplicative fees:

    a. Many of the work performed by DNLC was also performed by the prior counsel, Ms. Bakken. Additionally, the amount of time spent on the Motion for Turnover and Convert was not reasonable due to the length of their oppositions and novelty of the issues.

6. Asset Disposition and Settlement / Non-binding:

    a. The majority of communications related to a proposed buyback agreement took place between Ms. Bakken and Debtor's Counsel. When DNLC substituted as counsel, they "refused to honor any buyback agreement" negotiated with Ms. Bakken. Additionally, DNLC should not be compensated for time spent communicating

with prospective buyers because this is the job of a real estate broker.

Applicant's Response

Applicant filed a response on April 4, 2023. Dckt. 225. Applicant states:

1. Duplicative Billing Entries:

    a. There are no duplicative billing entries, as the fees awarded to Ms. Bakken were up until December 20, 2021, and DNLC began billing on December 22, 2021.

2. Billing rates:

    a. The court did not approve specific billing rates in the application. However, DNLC inadvertantly included old rates. Yet, nothing precludes DNLC from adjusting its rates from time to time.

3. Everything else:

    a. Real estate work that was performed was contacting potential purchaser to gauge interest given the legal and practical difficulties of the properties. Additionally, the time that Debtor finds unreasonable in connecting with the litigation was due to Debtor's failure to cooperate, which led to multiple rounds of briefing and hearings for multiple hearing dates.

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 DNLC's services for the Estate include expending time with Debtor's real property, attempts to turnover the property, litigation and contested matters, and possible buyback agreements. The court finds, under the unique facts and circumstances surrounding this case and numerous contested matters, 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.

General Case Administration: DNLC spent 1.20 hours in this category. DNLC communicated with Trustee regarding substituting and case status.

Asset Marketing & Sales and Asset Analysis & Recovery: DNLC spent 19.70 hours in this category. DNLC expended time regarding the turnover and marking of real property.

Litigation & Contested Matters and Claims Administration and Objections: DNLC spent 55.70 hours in this category. DNLC researched, analyzed, and communicated regarding issues with the Trust, communicated with creditors regarding leans, litigated a motion for turnover, and contested Debtor's motions to convert the case..

Fee / Employment Applications: DNLC spent 1.70 hours in this category.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
J. Russel Cunningham, Attorney	1.70	$450.00	$765.00
J. Russel Cunningham, Attorney	8.90	$495.00	$4,405.50
Benjamin C. Tagert, Attorney	30.90	$225.00	$6,952.50
Mikayla E. Kutsuris, Attorney	41.50	$195.00	$8,092.50
Total Fees for Period of Application			$20,215.50

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $520.92 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**

Copying	$0.10	$28.40
Postage	n/a	$127.52
Chase Card Services - U.S. Bankruptcy Court	$15.00	$15.00
Filing Fees	$350.00	$350.00
Total Costs Requested in Application		$520.92

At the hearing, xxxxxxx

~~FEES AND COSTS & EXPENSES ALLOWED~~

~~**Fees**~~

~~**Hourly Fees**~~

~~Upon review of the length history of this bankruptcy case, and the unique facts and circumstances surrounding the contested matters, the court finds that the hourly rates are reasonable, the services provided were reasonable, and that DNLC effectively used appropriate rates for the services provided.~~

~~First and Final Fees in the amount of $20,215.50 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Trustee from the available estate funds in a manner consistent with the order of distribution in a Chapter 13 case.~~

~~**Costs & Expenses**~~

~~First and Final Costs in the amount of $520.92 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Trustee from the available estate funds in a manner consistent with the order of distribution in a Chapter 13 case.~~

~~The court authorizes the Chapter 13 Trustee to pay 100% of the fees and 100% of the 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 $20,215.50~~
~~Costs and Expenses $520.92~~

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

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

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

The Motion for Allowance of Fees and Expenses filed by Nikki Farris, the former Chapter 7 Trustee, prior to the case converting to Chapter 13, ("Applicant") for services provided by Desmond, Nolan, Livaich, & Cunningham ("DNLC") the Attorney for Applicant, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Desmond, Nolan, Livaich, & Cunningham ("DNLC"),
Professional employed by the Chapter 7 Trustee

Fees in the amount of $20,215.50
Expenses in the amount of $520.92,

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

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

16. 21-21429-E-13 DNL-7 | **JAMIE HOWELL** Stacie Power | **MOTION FOR COMPENSATION FOR NIKKI FARRIS, CHAPTER 7 TRUSTEE(S)** **3-7-23 [210]**

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 March 7, 2023. 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 hearing on the Motion for Allowance of Professional Fees is continued to xx:xx x.m. on xxxx, 202x.

Nikki Farris, the Chapter 7 Trustee, prior to conversion to a Chapter 13, ("Applicant") makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period April 25, 2021, through October 27, 2022. Applicant requests fees in the amount of $7,215.00.

Chapter 13 Trustee's Nonopposition

Chapter 13 Trustee, David P. Cusick ("Chapter 13 Trustee"), filed a nonopposition on March 15, 2023. Dckt. 217. Trustee states they services were needed and the fees were reasonable.

Debtor's Opposition

The debtor, Jamie Howell ("Debtor"), filed an opposition to the Motion on March 24, 2023. Dckt. 219. Debtor states the fees are limited by 11 U.S.C. § 326 to only moneys disbursed or turned over in the case by the trustee. Applicant did not turn over any money to creditors of the estate, therefore, the total compensation is $0.00.

Applicant's Response

Applicant filed a response on April 4, 2023. Dckt. 227. Applicant states Debtor misapplies the purpose and scope of 11 U.S.C. § 326.

Reading the plain language of 11 U.S.C. § 326(a), there is a limit on compensation of a trustee is a case under Chapter 7 or 11. Section 326(a) provides:

> In a case under chapter 7 or 11 . . . the court may allow reasonable compensation under section 330 . . . of the trustee for the trustee's services, payable after the trustee renders such services, not to exceed 25 percent on the first $5,000 or less, 10 percent on any amount in excess of $5,000 but not in excess of $50,000, 5 percent on any amount in excess of $50,000 but not in excess of $1,000,000, and reasonable compensation not to exceed 3 percent of such moneys in excess of $1,000,000, upon all moneys disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor, but including holders of secured claims.

As other courts have found, "§ 326(a) does not preclude Chapter 7 trustee compensation in cases that are dismissed on the debtor's motion or converted to Chapter 13 prior to completion of Chapter 7 administration." *In re Colburn*, 231 B.R. 778, 782 (Bankr. D. Or. 1999) (citing *In re Berry*, 166 B.R. 932 (Bankr. D. Or. 1994); *In re Tweeten Funeral Home, PC*, 78 B.R. 998 (Bankr. D.N.D. 1987); *In re Stabler*, 75 B.R. 135 (Bankr. M.D. Fla. 1987); *In re Woodworth*, 70 B.R. 361 (Bankr. N.D.N.Y. 1987); *In re Parameswaran*, 64 B.R. 341 (Bankr. S.D.N.Y. 1986); *In re Smith*, 51 B.R. 273 (Bankr. D.D.C. 1984); *In re Pray*, 37 B.R. 27 (Bankr. M.D. Fla. 1983); *In re Flying S Land & Cattle Company, Inc.*, 23 B.R. 56 (Bankr. C.D. Cal. 1982); and *In re Rennison*, 13 B.R. 951 (Bankr. W.D. Ky. 1981)).

Voiding of the Law
vs Forfeiture of Fees

This presents the court with several interesting questions. First, as the Trustee argues, does the conversion of a Chapter 7 case result a *sub silentio* voiding of the provisions of 11 U.S.C. § 326 and there is no limit on the fees that a former Chapter 7 Trustee

Alternatively, does, as the Debtor argues, the court converting a Chapter 7 case to one under Chapter 13, which the debtor desires after the trustee has discovered assets to administer (including the recovery of possible post-petition rents received by the Debtor on property of the Bankruptcy Estate), result in a Chapter 7 trustee forfeiting fees for the work done that resulted in the Debtor seeking to pay creditors through a Chapter 13 case rather than walking away with a Chapter 7 discharge.

Neither of these extreme positions appears reasonable with the plain language of the Bankruptcy Code, as well as reality.

Congress provides in 11 U.S.C. § 330 that the court may award a trustee reasonable compensation for the actual and necessary services rendered by the trustee. In saying may, Congress is not stating that such fees may not be allowed on the whim of the judge, but that the court has the power to award reasonable fees (which are subject to the 11 U.S.C. § 326 cap). See 3 Collier on Bankruptcy ¶ 326.04. A Chapter 7 trustee is not the indentured servant of a debtor who seeks to convert a Chapter 7 case to one under Chapter 13.

In addressing the cap on a Chapter 7 trustee's fees, Congress states in 11 U.S.C. § 326(a):

> (a) In a case under chapter 7 or 11, other than a case under subchapter V of chapter 11, the court may allow reasonable compensation under section 330 of this title of the trustee for the trustee's services, payable after the trustee renders such services, not to exceed 25 percent on the first $5,000 or less, 10 percent on any amount in excess of $5,000 but not in excess of $50,000, 5 percent on any amount in excess of $50,000 but not in excess of $1,000,000, and reasonable compensation not to exceed 3 percent of such moneys in excess of $1,000,000, upon all moneys disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor, but including holders of secured claims.

Debtor argues that the language stating that the percentage caps are computed on "all monies disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor, but including holders of secured claims" results in this case the Trustee being entitled to **$0.00** in fees since the Debtor has prevented the distribution of monies by converting the case in lieu of the Trustee recovering and liquidating assets (including possibly post-petition rents from property of the Bankruptcy Estate by the Debtor).

This court does not read the above provisions as a forfeiture of fees in such a case where the Debtor belatedly comes to the table and only "desires" to pay creditors when the Chapter 7 Trustee is on the verge of recovering and liquidating assets. In substance, the monies equal to what the Trustee could have disbursed if Debtor did not elect to be the successor fiduciary to the Chapter 7 Trustee are being constructively distributed by the Chapter 7 Trustee through the successor fiduciary of the Bankruptcy Estate and as the Chapter 13 Plan administrator.

In effect, Debtor's desire to convert this case to one under Chapter 13 after substantial administration by the Chapter 7 Trustee has created a "multiple trustee case" in which the reasonable compensation for the Chapter 7 Trustee is considered in light of the work by the successor "trustee" (the fiduciary Debtor).

Prior Arguments Concerning
Possible Fraudulent Conveyances

This court has listed to the audio recording of the October 26, 2022 hearing on the Motion to Convert this Case to one under Chapter 13. The Chapter 7 Trustee expressed concern over the possible running of the Statue of Limitations (which arise both under State Law and the Bankruptcy Code) during the Chapter 13 case. These transfers appear to relate to property that Debtor transferred into a trust. Reference is made to some "agreement" by the Debtor that the trust assets were property of the Bankruptcy Estate.

The Chapter 7 Trustee was concerned that while the case was being prosecuted by the Debtor as a Chapter 13 case the statute of limitations is allowed to run. Then, the case is converted back to one under Chapter 7 and Debtor then contends that the property is not property of the Bankruptcy Estate and it is too late for the Chapter 7 Trustee to pursue such an action.

What was not discussed at the conversion hearing was who would be the fiduciaries of the Bankruptcy Estate who allowed the statute of limitations to run and if the Debtor was then successful in asserting that the transfer was made and the property in the trust was not property of the Bankruptcy Estate. Those fiduciaries of the Bankruptcy Estate when such statute of limitations was allowed to run and the Bankruptcy Estate suffer damages would be: (1) the Chapter 13 Debtor and (2) counsel for the Chapter 13 Debtor, both of whom has independent fiduciary obligations to the Bankruptcy Estate.

Apparent Lack of Prosecution
of Chapter 13 Plan and Case

In listening to the audio recording from the October 26, 2022 hearing on the Debtor's Motion to Convert this case, some discussion related to the Debtor's need to diligently prosecute the Chapter 13 case. In looking at the Docket, Debtor has not sought to prosecute confirmation of a Chapter 13 Plan.

On November 21, 2022, twenty-two days after the conversion of the Bankruptcy Case Debtor filed a proposed Chapter 13 Plan. Dckt. 171. If a bankruptcy plan is not filed withing fourteen (14) days of the filing of the Bankruptcy Petition, the Debtor must file and serve a motion to confirm, supporting pleadings, and set the motion for a notice hearing. L.B.R. 3015-1(c)(1), (c)(3).

Debtor did not file a motion to confirm the Chapter 13 Plan filed on November 21, 2022.

On March 6, 2023, four months later, and five (5) months after this case was converted, Debtor filed a second Chapter 13 Plan, Dckt. 202, which is now Debtor's Amended Plan. No motion to confirm, supporting pleadings, or notice of hearing have been filed by Debtor.

In Debtor's original Plan (Dckt. 171), which she did not try to confirm, Debtor was to pay $3,650 a month for sixty (60) months to fund the Plan. That would fund the Plan with $219,000 of disposable income of the Debtor generated post-petition. The Plan provided for at least a 25% dividend to creditors holding general unsecured claims. Plan, ¶ 3.14; Dckt. 171.

In the Amended Chapter 13 Plan filed on March 6, 2023, Debtor reduces the monthly plan payment to $1,250 a month for sixty (60) months and then a $92,000 lump sum payment in month six of the Plan. Plan ¶¶ 2.01, 2.02, 2.03, and Additional Provisions; Dckt. 202.

Debtor filed and "Amended" Schedule I on March 6, 2023. If amended, and not a supplemental Schedule I to show post-petition changes, then this income information would date all the way back to the April 19, 2021 filing of this case. On "Amended" Schedule I Debtor shows having new income information for her employment that has existed for one month and income for her Non-Debtor Spouse's employment that begun one year before the filing of the "Amended"Schedule I. This information is grossly different than that provided on Original Schedule I (including that Debtor was unemployed and had no Non-Debtor Spouse). Dckt. 1 at 34-35.

On "Amended" Schedule I Debtor states that her Non-Debtor Spouse has no wage income, no other income, but does receive a "Spousal Contribution" of $1,000 a month. "Amd" Schedule I, ¶ 8h.; Dckt. 203. If the Non-Debtor Spouse is receiving a "Spousal Contribution, then that Spousal Contribution would be being paid by the Debtor.

Debtor does state on "Amended" Schedule I that her Non-Debtor Spouse is self-employed. Dckt. 203 at 1.

On "Amended" Schedule J filed on September 28, 2022,, Debtor lists having four Dependents: Spouse, Daughter, Stepson, and Son. Dckt. 134 at 17. It appears that all of the expenses for this five person family unit (Debtor, Non-Debtor Spouse, and three children) are listed on Schedule J. However, the Non-Debtor Spouse's income is not disclosed, but only a possible $1,000 a month "contribution." It appears that at least 40% of the household expenses are the obligation of the Non-Debtor Spouse. It would appear that this would be ($2,000) a month, after backing out vehicle insurance and the mortgage, taxes, and insurance on other property owned by the Debtor.

Using the monthly income from "Amended" Schedule I (Dckt. 203) and expenses from "Amended" Schedule J (Dckt. 134), Debtor's monthly net income is insufficient to fund a Plan.

"Amended" Schedule I Monthly Income (Dckt. 203).....$4,146.90

Amended Schedule J Monthly Expenses (Dckt. 134).....($5,935.79)

Monthly Net Income to Fund Plan.....($1,789)

However, the court must make adjustment for expenses listed on "Amended" Schedule J which are now to be paid through the Amended Plan. Unfortunately, it is not clear where the Debtor is residing now, two and one-half years, and what housing expenses are included on Schedule J.

APPLICABLE LAW

Reasonable Fees

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the professional'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 professional 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 professional are "actual," meaning that the fee application reflects time entries properly charged for services, the professional must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. A professional must exercise good billing judgment with regard to the services provided because the court's authorization to employ a professional to work in a bankruptcy case does not give that professional "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 normal duties of a chapter 7 trustee during the pendency of the case, including case management, investigating assets and liabilities, efforts to sell nonexempt real property, and efforts to turnover property.

NO TASK BILLING

The court finds helpful, and in most cases essential, for professionals to provide a basic task billing analysis for the services provided and fees charged. This has long been required by the Office of the U.S. Trustee, and it is nothing new for professionals in this District. The task billing analysis requires only that the professional organize his or her task billing. The simpler the services provided, the easier it is for Applicant to quickly state the tasks. The more complicated and difficult to discern the tasks from the raw billing records, the more evident it is for Applicant to create the task billing analysis to provide the court, creditors, and U.S. Trustee with fair and proper disclosure of the services provided and fees being requested.

Included in the Motion is Applicant's raw time and billing records, which have not been organized into categories. Rather than organizing the activities that are best known to Applicant, it is left for the court, U.S. Trustee, and other parties in interest to mine the records to construct a task billing. The court declines the opportunity to provide this service to Applicant, instead leaving it to Applicant who intimately knows the work done and its billing system to correctly assemble the information. FN.1.

FN.1. The requirement for a task billing analysis is not new to this district and was required well before the modern computer billings systems. More than twenty years ago a bright young associate (not the present judge) developed a system in which he used different color highlighters to code the billing statements for the time period for the fee application. General administrative matters were highlighted in yellow, sales of property in green, adversary proceedings in red, and so on. Subsequently, the billing procedure advanced so that each adversary proceeding was provided a separate billing number so that it would generate a separate billing. Within the bankruptcy case billing number, the time entries were given a code on which the billing system could sort the entries and automatically produce a billing report that separates the activities into the different tasks.

The court continues the hearing, rather than denying the Application without prejudice, to afford Applicant the opportunity to provide the court, U.S. Trustee, and other parties in interest requesting the information with the necessary task billing analysis. Additionally, for both Applicant and Debtor to address whether the conversion of the case to one under Chapter 13 results in a forfeiture of fees by the Chapter 7 Trustee.

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 Professional Fees filed by Nikki Farris, the Chapter 7 Trustee, prior to conversion to a Chapter 13, ("Applicant") having been presented to the court, no task billing analysis having been provided in support of the Application, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Motion for Allowance of Professional Fees is continued to **xx:xx x.m. on xxxx, 202e**. Applicant shall file a supplemental declaration and supporting documents as necessary, to provide the court, U.S. Trustee, and other parties in interest requesting copies of such supplemental pleadings, with an explanation of the fees requested and a task billing

analysis that specifically groups the time and charges by the various task areas for such services.

Additionally, on or before **xxxxxxx , 2023**; Debtor and Applicant shall file a supplemental points and authorities further addressing the fees to be allowed a Chapter 7 Trustee when the disbursements of monies occur through the post-conversion Chapter 13 case. Replies, if any, shall be filed and served on or before **xxxxxxx , 2023**.

17.	**23-20229-E-13** **DPC-2**	**DARRAL BARROW** **Timothy Walsh**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **3-9-23 [17]**

17 thru 18

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the 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 March 9, 2023. By the court's calculation, 33 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. debtor is delinquent on plan payments.

B. Debtor failed to provide pay advices

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

D. Debtor needs to file a spousal waiver

DISCUSSION

Trustee's objections are well-taken.

Delinquency

Debtor is $1,836.46 delinquent in plan payments, which represents one month of the $1,836.46 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).

Failure to Provide Pay Advices

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). Debtor has failed to provide all necessary pay stubs. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

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). At the 341 meeting Debtor stated he had a $1,000.00 in monthly support obligations. This obligation is not stated on Debtor's Schedules and Debtor has not updated his Schedules since. There is not enough disposable income for Debtor to add an additional $1,000.00 expense. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Failure to file Spousal Waiver

Debtor indicates he is married but his spouse has not joined in the petition. Without the filing of the spousal waiver required by California Code of Civil Procedure § 703.140. California Code of Civil Procedure § 703.140(a)(2), provides:

> If the petition is filed individually, and not jointly, for a spouse, the exemptions provided by this chapter other than the provisions of subdivision (b) are applicable, except that, if **both** of the spouses effectively waive in writing the right to claim, during the period the case commenced by filing the petition is pending, the exemptions provided by the applicable exemption provisions of this chapter, other than subdivision (b), in any case commenced by filing a petition for either of them

> under Title 11 of the United States Code, then they may elect to instead utilize the applicable exemptions set forth in subdivision (b).

(emphasis added). The court's review of the docket reveals that the spousal wavier has not been filed. The Trustee's Objection is sustained, and the claimed exemptions are disallowed.

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.

18. 23-20229-E-13 DPC-1 | **DARRAL BARROW** **Timothy Walsh** | **OBJECTION TO DISCHARGE BY DAVID P. CUSICK** **3-6-23 [13]**

Final Ruling: No appearance at the April 11, 2023 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on March 6, 2023. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Objection to Discharge is sustained.

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

Debtor filed a Chapter 7 bankruptcy case on January 12, 2022. Case No. 22-20071. Debtor received a discharge on April 25, 2022. Case No.22-20071, Dckt. 14.

The instant case was filed under Chapter 13 on January 26, 2023.

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

Here, Debtor received a discharge under 11 U.S.C. § 727 on April 25, 2022, which is less than four years preceding the date of the filing of the instant case. Case No. 22-20071, Dckt. 14. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), Debtor is not eligible for a discharge in the instant case.

Therefore, the Objection is sustained. Upon successful completion of the instant case (Case No. 23-20229), the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant case.

The court shall issue 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 Discharge filed by David Cusick, the Chapter 13 Trustee, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to Discharge is sustained, and upon successful completion of the instant case, Case No. 23-20229, the case shall be closed without the entry of a discharge.

19. 23-20330-E-13 DPC-1 | **JUDE DICTADO** **Matthew DeCaminda** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **3-13-23 [23]**

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)©.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and parties requesting special notice on March 13, 2023. By the court's calculation, 29 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Jude Dictado ("Debtor") failed to provide evidence of their Social Security number.

B. Debtor failed to file tax returns.

DISCUSSION

Trustee's objections are well-taken.

Failure to Provide Social Security Number

Debtor failed to present the Trustee with evidence of their Social Security number at the Meeting of Creditors held on March 9, 2023. A presentation of such evidence, or of a written statement that such documentation does not exist, is required by Federal Rule of Bankruptcy Procedure 4002(b)(1)(B).

Failure to File Tax Returns

Debtor admitted at the Meeting of Creditors that he only recently filed his federal income tax return for the tax years 2018 through 2022. Filing of the return is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is cause to deny confirmation. 11 U.S.C. § 1325(a)(1). The Internal Revenue Service filed a claim (Claim 5-2) on March 16, 2023, which states that Debtor still owes tax arrears for the year 2017 and for the years 2019 through 2022. It is thus unclear if Debtor has properly filed their tax returns.

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

The court shall issue 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.

20. 23-20232-E-13 CAS-1 | **SETH/KRYSTAL PRATER** | **Mikalah Liviakis** | **OBJECTION TO CONFIRMATION OF PLAN BY ALLY BANK** | **3-9-23 [18]**

WITHDRAWN BY M.P.

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.

The Objection to Confirmation is xxxxxxx

Ally Bank ("Creditor") filed a "Withdrawal of Motion", which the court construes to be an *Ex Parte* Motion to Dismiss the pending Objection on March 27, 2023, Dckt. 22. However, the withdrawal is "conditioned upon the entry of the order of confirmation with the interest rate of 8.3% for the Class 2 creditor Ally Bank and without prejudice to refiling the same." *Id.* at 3:2-3. The Plan provides for Creditor with a 6.50% interest rate. Plan, Dckt. 3 at 4. It is unclear to the court whether the debtor, Seth Sheldon Prater and Krystal Lynne Prater ("Debtor"), stipulated to this increased interest rate.

If the court were to dismiss this Objection to Confirmation then the Debtor would be left without any vehicle to state amendments to the Plan and have the court authorize such amendments to be included in the order confirming the Plan. (It is the attorney who issues orders and determines what will be in them, not the parties directing the court what the court shall put in orders.)

Thus, by dismissing this Objection, Creditor would effectively prevent Debtor from confirming a Chapter 13 Plan.

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 Objection to Confirmation filed by Ally Bank ("Creditor") having been presented to the court, the Debtor stating an amendment to the Plan at the hearing and Creditor agreeing to the amendment, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the Objection to Confirmation is overruled and the proposed Chapter 13 Plan filed on **xxxxxxx**, 2023, amended to increase the Plan interest rate on Creditor's Class **xxxxxxx** Secured Claim to 8.3%, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, which shall include 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.~~

21. 22-22733-E-13 PGM-1 | **MATT/ESTHER SANCHEZ** | **MOTION TO CONFIRM PLAN**
Peter Macaluso | **2-23-23 [28]**

21 thru 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 February 23, 2023. 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 debtors, Matt Sanchez and Esther Sanchez ("Debtor"), seek confirmation of the Amended Plan. The Amended Plan provides for $1,770.00 to be paid per month from November 2022 through January 2023, and for $1,950.00 to be paid per month for the remaining 57 months beginning February 25, 2023. Amended Plan, Dckt. 32. 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 27, 2023. Dckt. 45. Trustee opposes confirmation of the Plan on the basis that:

1. Plan payment does not represent Debtor's best efforts.

   a. Amended Schedule I, Dckt. 34:

i. The Amended Schedule I shows that debtor Matt Sanchez ("debtor Matt") recently changed employments, from "Corrections – State of Ca" to "Temp. Retired Guard – Post Job."

b. Amended Form 122C-1, Dckt. 34

i. Does not appear to have any changes showing the new employment.

ii. Debtor has not provided evidence of the date that Debtor 1 was hired, such as two months of pay stubs. Therefore, Debtor's income may not properly be included on the form.

iii. Appears to bear either improper deductions or incorrectly stated amounts.

iv. #9b/33a lists a $635.00 deduction for the IRS, which would become overstated if the Debtor's pending Motion to Value Collateral is granted.

v. #16 shows a $913.38 deduction for taxes, while their Schedule I shows a tax withholding of $506.70.

vi. #17 shows an involuntary deduction of $20 where Schedule I shows $0.

c. Amended Schedule J appears to have an improper and unexplained expenses:

i. $102.00 per month for "Additional Tax Deduction for Ongoing Filings."

ii. $725.68 for "cell phone, internet, and cable services."

iii. $1,000.00 for food and household needs for 2 people, which is above the $779.00 allowed by the means test.

iv. $1,000.00 per month for vehicle preventative maintenance, with no explanation for why the Debtors need to spend such a large sum ($72,000.00 over the life of the plan) on vehicle maintenance.

The court notes, Schedule J states the $1,000 per month is for transportation in general, including gas, maintenance, bus or train fare. Not just preventative maintenance. Schedule J, Dckt. 34.

v. $200.00 for paying golf to "regenerate."

It is not clear if this is just for green fees or membership fees at a country club and food and beverage required minimums are buried in the reasonable and necessary food expense on Amended Schedule J.

vi. $100.00 in charitable contributions, even though their declaration states they have not been the steadiest contributors.

2. Plan relies on pending Motion to Value Collateral.

DEBTOR'S REPLY

Debtor filed a Reply on April 4, 2023. Dckt. 48. Regarding Trustee's Objections on not best efforts, Debtor states:

1. Best Efforts

a. Debtor's Employment:

i. Debtor Matt had a part time position with Green Haven Hardware in September of 2022, then started working part-time with the Department of Corrections.

ii. Debtor Esther Sanchez ("debtor Esther") was working at a dental office until mid-July 0f 2022. She then went on unemployment until September of 2022, and then went back to work at the dental office.

b. Debtor's Tax Deductions

i. Debtor does not have any opposition to providing Trustee with copies of all tax returns for the applicable five (5) year commitment period, and any and all refunds.

c. Expenses:

i. Debtor is budgeting with the cost of living increases.

ii. Car Expenses:

(1) Debtors have three vehicles, and the cost of gas and preventative maintenance, each month, equals about $1,000.00.

iii. Debtor has not provided explanations of the other expenses.

In looking at the "necessary" and "necessary" expense of ($1,000) a month for these two debtors, who have no dependents, to operate three vehicles between them, both debtors avoid providing any testimony under penalty of perjury, but merely have their attorney "front for them" by arguing such in the Reply. This argument fronted by their attorney consists of:

> In this case, the Debtors are paying for: a 2017 Durango and a 2013 Honda, and a 2010 BMW, which based the (3) vehicle total "Transportation, including gas maintenance" which includes driving to work, of approximately $200.00 & $300.00 per month, $250.00 per month in tires, oil changes, etc. for two vehicles, and $200.00 each for recreation, totaling $1,000.00.

Reply; p. 2:5-10; Dckt. 48. Debtor offer no reason for the need to drive a BMW, then zip around in a Honda, and then kick back in the Durango to maintain their pre-bankruptcy lifestyle.

In reviewing this case, Debtor has been driven to the financial abyss of needing the extraordinary relief provided by Congress in the Bankruptcy Code for having run up almost $100,000 in general unsecured debt, for which Debtor is so financially strapped that they cannot squeeze out any dividend to general unsecured claims, providing for a 0.00% dividend.

Debtor's next major Debtor is for priority taxes owed to the Internal Revenue Service, which priority taxes are stated to be in the amount of ($86,174.97) in the Plan; ¶ 3.09, Dckt. 32. In Proof of Claim 3-1, the Internal Revenue Service states that the total debt owed to the Internal Revenue Service is ($123,035.06), of which : ($36,836.88) is secured, ($36,860.09) is priority, and the balance is a general unsecured claim.

The California Franchise Tax Board has filed Proof of Claim 16-1 for a ($21,618.93) claim, of which ($12,613.55) is stated to be a priority unsecured claims.

In addition to the ($1,000) a month for the three vehicles, additional expenses on the Amended Schedule J (Dckt. 34) that catch the court's eye and may well not be a good faith, reasonable stated expense for someone seeking the extraordinary relief under the Bankruptcy Code include:

($650) for electricity and natural gas

($520) for phone

($205) for internet

($1,000) for food and housekeeping supplies

($280) for clothing

($300) for personal care products

On Amended Schedule I Debtor lists having $5,604 in gross wage income, from which Debtor has ($506) in withholding for taxes and Social Security. Dckt. 34 at 4-5. Debtor then lists an additional $4,809.97 in pension or retirement income. $0.00 is listed for Social Security income.

Debtor has $10,313 in monthly gross income, for which there is only ($506) in monthly withholding for federal and state taxes, and Social Security and Medicare taxes. On Schedule J Debtor lists another ($102) a month for federal and state taxes.

Thus, on $123,756 in gross income, only about ($4,736) of monies are available for payment of federal and state taxes. It appears that this grossly under funds Debtor's post-petition income taxes and may well be a continuing tax default economic plan through the use of the Bankruptcy Code.

Using these large expenses on Amended Schedule J, Debtor purports to have only $1,950 in monthly projected disposable income. Amd Sch J; Dckt. 34 at 6-7. This appears to be what Debtor needs to making monthly payments to keep three vehicles, and a ($1,000) a month vehicle expense for these two debtors who have no dependents, pay what Debtor computes to the Internal Revenue Service secured claim, and the priority tax claims.

It is as if Amended Schedules J is a MAI (made as instructed) set of expenses created by Debtor and Debtor's counsel to avoid having any money in projected disposable income for the ($100,000) of general unsecured claims. This would violate not only each of the two debtors stating the expenses under penalty of perjury, but the certifications made by each of the debtors and Debtor's counsel as provided in Federal Rule of Bankruptcy Procedure 9011.

Issues of good faith (in addition to statements having been made under penalty of perjury and the 9011 certifications) in Debtor filing this case, proposing the Plan, and prosecuting confirmation of the Plan based on the questionable expenses. This lack of good faith, and possible bad faith, could well result not only Debtor being unable to confirm a Plan in this case, but the court dismissing this Bankruptcy Case with prejudice (resulting in all of Debtor's debts being nondischargeable in any future bankruptcy cases.), in addition to appropriate sanctions by this court for false statements under penalty of perjury and violation of the Rule 9011 certifications, as well as possible prosecution by the U.S. Attorney for false statements made under penalty of perjury in federal court and the Bankruptcy Schedules.

At the hearing, **xxxxxxx**

DISCUSSION

Not Best Effort

The Chapter 13 Trustee alleges that the Plan violates 11 U.S.C. § 1325(b)(1), which provides:

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

Overall, the Trustee is concerned that the Debtor is not making their genuine best efforts to limit their expenses in order to properly fund their Plan. The Trustee contends that the Debtor is trying to pass

on unnecessary lifestyle expenses to their unsecured creditors while avoiding paying any of their claims. The Court agrees that several of these expenses appear to be unnecessary. The Court also notes that the discrepancies in the Debtor's income, expense, and tax information suggest the Debtor may not have properly accounted for their disposable income in this case. Taken together it appears that the Debtor has not exercised their best efforts to fund the plan. Thus, the Plan may not be confirmed.

Reliance on Pending Motion

A review of Debtor's Plan shows that it relies on the court granting the Debtor's pending Motion to Value Collateral of the Internal Revenue Service. Dckt. 37. The court, having granted the Motion to Value Collateral in conjunction with this Motion, Docket Control No. PGM-2, overrules the objection on these grounds.

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 debtors, Matt Sanchez and Esther Sanchez ("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.

22. 22-22733-E-13 PGM-2 | **MATT/ESTHER SANCHEZ** | **Peter Macaluso** | **MOTION TO VALUE COLLATERAL OF INTERNAL REVENUE SERVICE** | **3-10-23 [37]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, parties requesting special notice, other parties in interest, and Office of the United States Trustee on March 10, 2023. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of the Internal Revenue Service is denied without prejudice.

The Motion filed by Matt Sanchez and Esther Sanchez ("Debtor") to value the secured claim of the Internal Revenue Service ("IRS" or "Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 40. Debtor's Motion states the grounds upon which the relief is based with particularity (as the U.S. Supreme Court requires in Federal Rule of Bankruptcy Procedure 9013) as follows:

> Debtors, Matt D. Sanchez and Esther A. Sanchez, by and through their attorney of record, moves the Court herein to value the collateral securing Debtors' indebtedness to the Internal Revenue Service, to wit a lien on personal property. This Motion is based on the following:
>
> 1. That on October 24, 2022 Debtors filed a Chapter 13 to reorganize their debts.

2. Against their personal property is a lien with the Internal Revenue Service in the amount of $36,836.88, pursuant to the claim filed with the court on November 10, 2022.

3. The lien was originally recorded on March, 28, 2019.

4. The Debtors value their personal property at $7,315.00.

Refer to the Declaration of Debtors filed herewith and Exhibit A.

Motion, Dckt. 37. The above is the entirety of the Motion and the grounds, stated with particularity, which the court is to consider.

The grounds stated with particularity in the Motion are nothing more than telling the judge the Debtor's personal conclusions and findings of fact, and telling the court to review other proceedings and provide legal services for Debtor in the form of determining which grounds should be stated with particularity so the Debtor can win the Motion. Such is not the proper role of a judge, or that of an attorney who by a motion seeks to assign client attorney work to a federal judge.

In light of Debtor's counsel extensive consumer attorney bankruptcy experience, this lack of stating grounds with particularity do not appear to an accident, but may well be a testing of the waters to see how much work the attorney can avoid doing.

Other Pleadings the Court is Assigned to Review to Determine What Grounds Must be Stated With Particularity in the Motion (Fed. R. Bankr. P. 9013).

The court's first assignment is to review the Debtor's Declarations and exhibits. If the court were providing such services for Debtor's counsel, the Personal Property which is the subject of the Motion is:

1. Furniture – $1,500

2. Appliances – $500

3. Kitchen items – $400

4. Outdoor items – $100

5. Pictures – $100

6. Exercise Equipment – $500

7. Electronics – $500

8. Clothing – $200

9. Jewelry – $220

10. Wells Fargo Account – $1.00

11. Cal Bear Account – $25.00

12. Life Insurance – $1.00

13. Cal Pers Retirement – Not property of the estate

14. 2017 Dodge Durango FMV – Total value $22,000, balance owed $18,756.05, net equity $3,243.00

("Property"), Declaration, Dckt. 40. Debtor seeks to value the Property at a replacement value of $7,315.00 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

The Chapter 13 Trustee, David Cusick, filed a notice of Non-Opposition on March 23, 2023. Dckt. 43. Trustee states that Debtor's schedules, filed as exhibit A to the Motion to Value Collateral (Dckt. 39), support the Debtor's valuation of their personal property at $7,315.00.

DISCUSSION

Creditor filed Proof of Claim No. 3-1 o n November 10, 2022. The Proof of Claim asserts that $36,836.88 is secured by the Property, that $36,860.09 is a priority unsecured claim, and that $49,338.09 is a general unsecured claim.

As has been disclosed, in filing proofs of claim, the IRS makes its own calculation for purposes of 11 U.S.C. § 506(a) based upon Debtor's assets and then bifurcates the secured and unsecured portions of its claim. The IRS appears to have followed that procedure here.

Debtor's Points and Authorities is correctly limited to the legal points and authorities, and arguments. (The motion, points and authorities, each declaration, and the exhibits (which may be combined into one exhibit document) must be filed as separate pleadings under the Local Bankruptcy Rules).

The Motion failing to state the grounds with particularity, including identifying the property that is the subject of the Motion, the Motion is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Collateral and Secured Claim filed by Matt and Esther Sanchez ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied without prejudice.

23. 23-20236-E-13 CAS-1
BRENDA BRECEDA
Gary Fraley
OBJECTION TO CONFIRMATION OF PLAN BY CAPITAL ONE AUTO FINANCE
3-9-23 [23]

23 thru 24

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

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)©.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on March 9, 2023. An Amended Proof of Service was filed on March 16, 2023. By the court's calculation, 33 days' notice was provided by the March 9 service, and 26 days' notice was provided by the Amended Service on March 16. 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.

Capital One Auto Finance ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

A. The Plan fails to account for Creditor's secured claim.

B. The Plan fails to pay the applicable prime plus interest rate.

C. The Plan does not provide for equal monthly payments to Creditor.

DISCUSSION

Creditor's objections are well-taken.

Failure to Provide for a Secured Claim

Creditor asserts a claim of $16,925.39 in this case. Proof of Claim 1-1.

Debtor's Schedule A/B states that the value of the potion of property Debtor owns is $0.00, because "Debtor is on title only and has no equitable interest. Adult Daughter is co-debtor and makes payments directly." Dckt. 9, page 4. Similar information is repeated in the Debtor's Schedule D. Dckt. 9. The Plan does not provide for treatment of this Claim, seemingly in line with the Debtor's statement that they hold no equitable interest. Dckt. 8.

The Debtor merely asserting a $0.00 value in the vehicle is insufficient, especially when he has been and makes regular monthly payment (even though asserting that he is reimbursed). Absent is any evidence of how the interests were acquired, how their respective interests have been documented, and why Debtor's interest has no value.

Creditor alleges that the Plan is not feasible and violates 11 U.S.C. § 1322(b)(2) because it contains no provision for payment of Creditor's matured obligation, which is secured by Debtor's vehicle. *See* 11 U.S.C. § 1325(a)(6).

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

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

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

A. Provide a treatment that the debtor and creditor agree to (11 U.S.C. § 1325(a)(5)(A)),

B. Provide for payment in full of the entire claim if the claim is modified or will mature by its terms during the term of the Plan (11 U.S.C. § 1325(a)(5)(B)), or

C. Surrender the collateral for the claim to the creditor (11 U.S.C. § 1325(a)(5)(C)).

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

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

Notwithstanding the absence of a requirement in 11 U.S.C. § 1322(a) that a plan provide for a secured claim, the fact that this Plan does not provide for respondent Creditor's secured claim raises doubts about the Plan's feasibility. *See* 11 U.S.C. § 1325(a)(6). Additionally, Debtor claiming no equitable in the interest does not give an accurate picture of Debtor's financial reality. That is reason to sustain the Objection.

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

The court shall issue 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 Capital One Auto Finance ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

24. 23-20236-E-13 DPC-1 | **BRENDA BRECEDA** Gary Fraley | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** 3-6-23 [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)©.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and parties requesting special notice on March 6, 2023. By the court's calculation, 36 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. Plan may not be feasible.

(I) Debtor's Plan relies on monthly contributions of $1,700.00 from her daughter, listed in Schedule I. It is not clear to the Trustee who the daughter is. Debtor has not filed any proof of contributions.

(ii) Debtor's Plan does not provide for payments on Claim 1, a 2018 Mercedes Class 250.

(iii) Trustee cannot determine if Debtor's Schedule J lists the correct amount of expense for payments on Claim 1.

DISCUSSION

Trustee's objections are well-taken

Infeasible Plan

Trustee alleges that the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

The Plan currently incorporates monthly contributions of $1,700.00 from Debtor's daughter, visible on Debtor's Schedule I as "Daughter's contribution" for $1,500.00 and "Daughter's contribution for Debtor's sons's private school" for $200.00. Dckt. 9, page 21, 8h. There is no additional explanation explaining who the Daughter is, nor has any proof of these contributions been filed, in the form of a declaration or otherwise. As Trustee noted, Debtor's Schedule J lists a 21 year old Daughter and two sons. Dckt. 9, page 22. It is unclear if this 21 year old Daughter is the same Daughter who will contribute to the plan. The lack of clarity surrounding this contribution is troubling.

Trustee is also concerned that Debtor's Schedule J may not list the correct monthly expense for a 2018 Mercedes. Debtor has indicated a car payment of $500.00 (Schedule J, Dckt. 9 #17a, #24), but also indicates that they expect either an increase or a decrease in monthly expenses due to "Monthly car payment on adult daughter's vehicle is automatically deducted from Debtor's account. Daughter pays Debtor every month to cover this expense." *Id.* It is not clear whether the monthly car payments of $500.00 will be a monthly expense to Debtor or whether their daughter will pay for it. Additionally, since the monthly car payment is deducted from Debtor, it is not clear what will occur in the event daughter defaults on payment to Debtor. Evidence from Debtor and daughter providing more detail to this expense, in a declaration or otherwise, is necessary to assess the feasibility of the Plan.

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

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.

25. 22-20137-E-13 DPC-1 | **RAYMOND WILLIAMS/ DARCELL HASKINS Paul Bains** | **OBJECTION TO CLAIM OF CARMAX AUTO FINANCE, CLAIM NUMBER 1 2-14-23 [32]**

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 3007-1 Objection to Claim—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, other parties in interest, and Office of the United States Trustee on February 14, 2023. By the court's calculation, 56 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

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

The Objection to Proof of Claim Number 1-1 of CarMax Auto Finance is xxxxxxx .

David Cusick, the Chapter 13 Trustee, ("Trustee") requests that the court disallow the claim of CarMax Auto Finance ("Creditor"), Proof of Claim No. 1-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of $859.25. Claim. Upon review of the Claim and Trustee's assertions, it appears:

1. Trustee has disbursed $450.12 to Creditor based on the Claim filed by Creditor. However, after review of the Claim, it appears Creditor "terminated" the claim on January 21, 2022. The vehicle is not listed on Debtor's Schedules, therefore, it appears the vehicle was traded in prior to filing for bankruptcy.

2. The Claim asserts that Creditor terminated an amount of $25,185.26 on the date of the bankruptcy filing, and there is now a balance of $859.25.

3. Upon review of Claim 11-1, it appears Debtor traded in the vehicle that was financed through Creditor to purchase a new vehicle on January 15, 2022 through Carvana. It appears Debtor is financing the new vehicle through Carvana. It is unclear whether Debtor paid off the entire amount owed to Creditor during the trade-in, or whether Creditor retained a lien on the new vehicle.

   a. If Debtor traded in the vehicle, unless Creditor retained a lien on the new vehicle, it appears Creditor no longer holds a secured interest. If Creditor holds any interest, it would be an unsecured claim in the amount of $859.25.

4. The Trustee is unsure whether the Creditor has issued a refund to the Debtor, or is the Creditor has retained those funds.

At the hearing, XXXXXXXXXX

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.

Based on the evidence before the court, Creditor's claim is xxxxxxxxx. The Objection to the Proof of Claim is xxxxxxxxx.

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 CarMax Auto Finance ("Creditor"), filed in this case by David Cusick, the Chapter 13 Trustee ("Objector") having been presented to

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

IT IS ORDERED that the Objection to Proof of Claim Number 1-1 of Creditor is xxxxxxxxxx.

26. 22-22538-E-13 EJS-1 | **GRANT HANEY** / **Eric Schwab** | **MOTION TO CONFIRM PLAN** / **2-21-23 [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—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 21, 2023. 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 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, Grant Haney ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for Debtor to pay $12,794.00 from November 2022 through March 2023, and $7,7175.00 from April 2023 through October 2027. Amended Plan, Dckt. 42. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on March 3, 2023. Dckt. 51. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor has made no plan payments to date.

B. Debtor has under-reported ongoing mortgage arrears.

C. Trustee believes Debtor has an unscheduled spousal support obligation.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserted that Debtor has not made any payments into the plan, and is $63,970.00 delinquent in plan payments, which represents five months of the initial $12,794.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor gave reason for their lack of payments in the Declaration supporting their Motion. Dckt. 43. Debtor stated they received an offer to buy their farm shortly after filing, and decided to not make payments into the Plan in anticipation of the sale. The unspoken idea seems to be that Debtor would use the proceeds of the sale to fund the Plan.

Debtor has given the Court a reason for their initial lack of payments, but has not explained their failure to make payments into the Plan in the month following their submission of the Motion to Confirm Amended Plan. The Motion to Confirm was submitted February 21, 2023. Dckt.40. The Trustee's Opposition was submitted March 27, 2023. Dckt. 51. The Trustee's Opposition contends the Debtor has still, as of March 27, failed to make any payments into the plan. The continued delinquency and complete lack of payments after submitting a new modified Plan indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. §1325(a)(6).

Infeasible Plan

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

Debtor may have a spousal support obligation that has not been scheduled. Debtor's declaration, Dckt. 43, states Debtor no longer has a child support obligation. However, Trustee states Debtor provided a Domestic Support Obligation Worksheet that indicated both spousal and child support. Therefore, although Debtor no longer has child support obligations, it appears Debtor may still have spousal support obligations. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Failure to Cure Arrearage of Creditor

The Plan provides for an ongoing mortgage of $9,071.00 and post-petition arrears of $9,611.00. Trustee states this is an understatement of post-petition arrears. Therefore, Debtor fails to provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B).

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, Grant Haney ("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.

27. 23-20240-E-13 DPC-1 | **WILLIAM MCCULLOCH** **Robert Goldstein** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **3-7-23 [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)©.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and parties requesting special notice on March 7, 2023. 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. William McCulloch ("Debtor") failed to provide Tax Returns.

B. The Plan is not feasible.

DISCUSSION

Trustee's objections are well-taken.

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). Debtor has failed to provide the tax transcript. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Infeasible Plan

Trustee alleges that the Plan is not feasible. 11 U.S.C. § 1325(a)(6). The Plan is not feasible because the listed payments are not sufficient to fund the Plan. Debtor proposes a monthly payment of $320.94. Debtor lists Mountain West Financial as a class 1 creditor with a monthly payment of $1,787.90. A monthly payment of $320.94 cannot fund the Plan as it currently stands.

Trustee has asserted that the Mountain West Financial class 1 claim may be misclassified. Class 1 covers all delinquent secured claims that mature after the duration of the Plan. Debtor stated at the meeting of creditors that he is current with his Mountain West mortgage. It thus appears that Debtor is not delinquent. Therefore, it appears Mountain West should be listed as a class 4 claim rather than a class 1. This misclassification would also account for the disconnect between the Plan payments and the much larger class 1 claim.

Finally, Trustee has noted that in its current state the Plan would take 999 months or more to complete. Trustee is correct that this would exceed the maximum amount of time allowed under 11 U.S.C. §1322(d). Thus, the Plan may not be confirmed.

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.

28. 20-21358-E-13 DPC-1 | **DEANNE VASQUEZ** **Mikalah Liviakis** | **OBJECTION TO CLAIM OF INTERNAL REVENUE SERVICE, CLAIM NUMBER 4 2-14-23 [20]**

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 3007-1 Objection to Claim—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on, Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on February 14, 2023. By the court's calculation, 56 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

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

The Objection to Proof of Claim Number 4-1 of Internal Revenue Service is ~~sustained~~.

David P. Cusick, the Chapter 13 Trustee, ("Objector") requests that the court disallow the claim of Internal Revenue Service ("Creditor"), Proof of Claim No. 4-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be priority unsecured in the amount of $1,962.12 for 2017 taxes and $2,354.20 for 2019 taxes. Creditor filed an amended claim which shows only $403.12 for 2017 taxes.

Objector objects to determine the proper amount of the claim.

It is unclear if whether (1) $403.12 is the current balance of the 2017 taxes or (2) whether 2017 was the total amount due for 2017 taxes, not $1,962.12. If the later, Objector asserts that they have overpaid Creditor and Debtor should be refunded.

At the hearing, XXXXXXXXXX

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.

Based on the evidence before the court, Creditor's claim is xxxxxxxxx. The Objection to the Proof of Claim is 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 Objection to Claim of Internal Revenue Service ("Creditor"), filed in this case by David P. Cusick, the Chapter 13 Trustee, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Proof of Claim Number 4-1 of Creditor is xxxxxxxxxxx

29. 18-26184-E-13 DPC-3 | **OLEG/SOMMER ZHURKO** **Mark Shmorgon** | **OBJECTION TO CLAIM OF ALLY BANK, CLAIM NUMBER 1 2-14-23 [72]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on February 14, 2023. By the court's calculation, 56 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

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

The Objection to Proof of Claim Number 1-2 of Ally Bank is xxxxxxxxxxx.

David P. Cusick, the Chapter 13 Trustee, ("Objector") requests that the court disallow the claim of Ally Bank ("Creditor"), Proof of Claim No. 1-2 ("Claim"), Official Registry of Claims in this case. Creditor's original claim, Claim 1-1, was secured in the amount of $22,878.67. However, the Claim was amended on December 6, 2022 to assert an unsecured in the amount of $14,298.34. Proof of Claim 1-2.

Objector objects to the amended claim and believes the original claim amount was correct. Objector believes Creditor has an unsecured claim in the amount of $5,878.67, which will receive a disbursement under the Plan. Objector seeks the court enter an order disallowing the amended claim and reinstating the original claim.

At the hearing, XXXXXXXXXX

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.

Based on the evidence before the court, Creditor's claim is xxxxxxxxxxx. The Objection to the Proof of Claim is 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 Objection to Claim of Ally Bank ("Creditor"), filed in this case by David P. Cusick, the Chapter 13 Trustee, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Proof of Claim Number 1 of Creditor is xxxxxxxxxxx

30. 23-20285-E-13 EAT-1 | **JOHN MAMONONG** **Paul Bains** | **OBJECTION TO CONFIRMATION OF PLAN BY LAKEVIEW LOAN SERVICING, LLC** **3-10-23 [14]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on March 9, 2023. By the court's calculation, 33 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.

Lakeview Loan Servicing, LLC ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

A. the debtor, John Salinas Mamonong ("Debtor"), has misclassified Creditor's claim.

B. Debtor's proposed Plan incorrectly states ongoing mortgage payments.

C. Debtor's proposed Plan does not cure pre-petition arrearage.

DISCUSSION

Creditor's objections are well-taken.

Misclassification of Creditor's Claim

11 U.S.C. § 1325(a)(1) provides for confirmation of a plan if it complies with Chapter 13 provisions and other applicable Code provisions. Here, Debtor has indicated that Creditor's claim is a Class 4. (Dckt. 3). A class 4 claim is a claim that does not suffer from pre-petition arrears and provides for an ongoing payment. Creditor has provided that there are pre-petition arrears and the suggested payment amount is also inaccurate (see below). Debtor's proposed Plan does not comply with 11 U.S.C. § 1325(a)(1).

Plan Incorrectly States Mortgage Payments

11 U.S.C. § 1325(a)(1) provides for confirmation of a plan if it complies with Chapter 13 provisions and other applicable Code provisions. Here, Debtor has proposed a plan that incorrectly states the mortgage payment as $2,980.66 (Dckt. 3), while the correct amount is $3,490.43, as seen with Creditor's Mortgage Attachment. The Plan does not comply with 11 U.S.C. § 1325(a)(1).

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 $5,994.48 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.

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 Lakeview Loan Servicing, LLC ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

31. 23-20188-E-13 DPC-1 | **PORTIA STEWART** **Peter Macaluso** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK** **3-14-23 [21]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, on March 14, 2023. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

The 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 debtor, Portia Merie Stewart ("Debtor"), has not filed tax returns for 2020 and 2021.

B. Debtor is delinquent in Plan payments.

C. Debtor has failed to provide necessary information for Schedules A/B, C, and I.

D. Debtor may fail the liquidation analysis.

DEBTOR'S REPLY

Debtor filed a reply on March 28, 2023. Dckt. 25. Debtor states:

1. Their taxes are being prepared, and they have submitted their returns to their CPA.

2. Debtor is now current on Plan payments.

3. Debtor has corrected their amendments.

4. Debtor has amended their exemptions, which helps with the liquidation analysis.

DISCUSSION

Trustee's objections are well-taken

Failure to File Tax Returns

Debtor admitted at the Meeting of Creditors that the federal income tax return for the 2020 and 2021 tax years have not been filed. Filing of the return is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Delinquency

Debtor is $1,910.00 delinquent in plan payments, which represents one month of the $1,910.00 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.

Debtor indicates they are now current. At the hearing, XXXXXXXXXX

~~Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).~~

Missing Information in Schedules A/B, C, and I

11 U.S.C. § 1325(a)(1) provides for confirmation of a plan if it complies with Chapter 13 provisions and other applicable Code provisions.

Trustee has indicated that Debtor disclosed that there was a deposit of $23,700.00 but has denied any financial accounts in the original Schedule A/B. (Dckt. 11). Further, Debtor has inappropriately listed "electrical appliances" under section 704.111 on Debtor's Schedule C. (Dckt. 11). As section 704.111 references no exemption in existence, this appears to be a typographical error. Finally, Debtor has failed to include additional income–rent from a roommate and selling clothes on Pintrest–in her Schedule I, that Debtor admitted during the meeting of the creditors. (Dckt. 23).

Here, Debtor has provided amended schedules A/B, C, and I. (Dckt. 27 and 28). Debtor has included the $23,700.00 funds in her schedules and has exempted these funds under schedule B and C.

(Dckt. 28 and 27 respectively). Debtor has also provided an amended Schedule C with the appropriate exemption section for electrical appliances, 704.020. (Dckt. 28). Finally, Debtor has included her "roommate" as a source of additional income under Schedule I. (Dckt. 27).

However, Debtor has not included the sale of clothes that she indicated during the meeting of the creditors. However, Debtor indicates that this is not a "solid job" and will instead use $880.00 from her savings until she secures a steady job. (Dckt. 25).

It appears Debtor's amendments have resolved Trustee's concerns. At the hearing, XXXXXXXXXX

Debtor Fails Liquidation Analysis

Debtor's plan fails the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Trustee states that Debtor is no longer employed, has not indicated any payments of $600 in the Statement of Financial Affairs, and it is unclear how much of Debtor's savings remains.

Debtor has indicated that with the additional income from her roommate in conjunction with using $880 from her savings will satisfy the monthly payments of $1,910.00 until Debtor can secure a steady job. (Dckt. 25).

Although Debtor has remedied many of the issues described by Trustee, the Court is unable to determine whether or not Debtor passes the liquidation analysis. Without additional information as to how much of Debtor's savings remains and when Debtor is likely to secure a steady job, the court is unable to determine the feasibility of the Plan. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained, and the Plan is not confirmed.

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

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

32. 23-20189-E-13 DPC-1 | **GREGORY/CHO FRENCH** **Patricia Wilson** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK** **3-14-23 [20]**

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 March 14, 2023. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. debtor may have additional undisclosed funds.

B. Creditor maybe misclassified as Class 1.

C. Debtor is a serial filer.

D. Debtor is missing information in the filing.

DEBTORS' RESPONSE

Debtors Gregory Wayne French and Cho Yon French filed a Response on March 28, 2023. Dckt 24. Debtors argue their income was accurately stated in the filing and provide calculations and

exhibits of pay stubs and bank statements as evidence. Additionally Debtors state a they believe an amended plan will be required because of the proof of claim filed by Freedom Mortgage.

DISCUSSION

Trustee's objections are well-taken

Failure to Provide Disposable Income

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

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

The Plan proposes to pay a 30% percent dividend to unsecured claims, which total $162,773.83, though Debtor's projected disposable income under 11 U.S.C. § 1325(b)(2) is questionable. First, Trustee is uncertain whether the court would allow Debtors to continue contributions of $412.07 to their retirement plan. Dckt. 20. Second, Trustee is uncertain of the source of funds found in Debtor's Golden 1 bank account. *Id.* Trustee requests debtor to clarify why there are substantially more funds in deposits than what is listed on Debtors' Schedule I. *Id.*

Debtors' Response provides additional documentation including pay stubs and Golden 1 account bank statements to resolve the objections raised by the Trustee. Exhibits 1-4, Dckt 25. Upon review of Debtors' Schedule I, the court deems it reasonable in this case to allow Debtors to make voluntary contributions to towards their retirement. Schedule I, Dckt. 9.

Misclassification of Claim

Trustee states that they are uncertain if Claim No. 13 Creditor should be listed as Class 1 or Class 2 creditor. Upon review of the proof of claim filed by the Creditor, Toyota Motor Credit, the secured claim would mature within the plan as the contract states a term of 72 monthly payments which began on October 11, 2016. Claim No. 13, Attachment 1. Accordingly, this claim would mature within the plan and thus, the claim should be classified as Class 2.

Serial Filer

Debtor filed 4 previous bankruptcy cases, 2 of which were chapter 13 (#21-24084, filed 12/6/21 and dismissed 1/5/23; and, #19-24802 filed 7/31/19 and dismissed 12/3/21). Debtor's recent bankruptcy cases have 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.

Missing Information

Trustee states they reviewed Golden 1 Credit Union statements. Trustee is uncertain if all financial accounts for deposits of money have been listed on Schedules A/B. Debtors' Response and filed exhibits likely clear any uncertainty to this objection as Debtor has provided explanation via calculations and additional bank statements. Exhibits 1-4, Dckt. 25.

Trustee raises objection to Debtors' voluntary retirement contributions of $412.07. This amount includes 401(k) deductions of $100.24 per check, 401(k) loan of $96.76 per check, and an Employee Loan of $100 per check, which are not listed in Debtors' Schedule I. Additionally, Debtors' did not advise the Trustee of 401(k) loan or the Employee Loan at the Meeting of Creditors. Trustee would like more information in regards to this such as when the loans will be paid off and if the amounts paid could be added as a step-up payment to the plan once paid of.

Trustee also raises objection to Debtors' Statement of Financial Affairs. The Trustee believes withdrawals from various entities suggests frequent gambling. Gambling winnings and/or losses are not identified on the Statement of Affairs, #5 and #16. Dckt. 9.

Without an accurate picture of Debtor's financial reality, the Plan cannot be confirmed.

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.

33. 22-20494-E-13 EJS-2 | **MANUEL/RUTH CURIEL** | **MOTION TO CONFIRM PLAN**
Eric Schwab | **2-21-23 [44]**

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

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, parties requesting special notice, and Office of the United States Trustee on February 21, 2023. 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.

Manuel Curiel and Ruth E. Curiel ("Debtor") seek confirmation of the Chapter 13 Plan. The Plan provides for monthly payments of $2,187.00 for a 60 month period. Plan, Dckt. 48. Debtor indicates that $2,000.00 was paid to Debtor's attorney and an additional fee of $2,000.00 will be paid during the life of the plan. *Id.* Debtor's Class 1 claims include creditor Real Time Resolutions having two claims in the amount of $70,742.00 and $4,000.00. *Id.* Debtor has included Ally Financial and Portfolio Recovery under Class 2 with claims of $5,354.00 and $6,252.00 respectively. *Id.* Debtor includes PHH Mortgage Corp under Class 4 with a monthly contract installment of $1,624.00. *Id.* Finally, Debtor provides for a 100% dividend to unsecured creditors, totaling $28,652.00. *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 27, 2023. Dckt. 53. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor cannot afford Plan Payment.

B. Debtor is delinquent in Plan payments.

C. Debtor has failed to file a motion to avoid lien.

D. Debtor has failed to attach a statement for property or business income, failed to file the Disclosure of Compensation of Attorney, and failed to file the Rights and Responsibilities.

E. Debtor has failed to provide business documents.

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). Debtors have failed to make Plan payments, disclose appropriate information within Debtor's schedules, and provide necessary documents to the Trustee. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Delinquency

Debtor is $4,400.00 delinquent in plan payments, which represents multiple months of the $2,718.00.00 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 Portfolio Recovery. Debtor has failed to file a Motion to Value the Secured Claim of Portfolio Recovery, however. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

Failure to Provide Chapter 13 Documents

11 U.S.C. § 1325(a)(1) provides for confirmation of a plan if it complies with Chapter 13 provisions and other applicable Code provisions. Here, Debtor has proposed a plan that is woefully lacking in compliance with the Bankruptcy Code. Debtor has failed to attach a statement for property or business income; thus, the Court cannot determine whether or not the $4,647.00 is gross or net income. Dckt. 42. Further, Debtor has failed to file the Disclosure of Compensation as required by the Federal Rules of Bankruptcy Procedure, Rule 2016. Finally, Debtor has failed to file the Rights and Responsibilities required under the Local Bankruptcy Rules, Rule 2016-1(c). The Plan does not comply with 11 U.S.C. § 1325(a)(1).

Failure to File Documents Related to Business

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

A. Business Questionnaire, and
B. 2021 Franchise Tax Board return
C. 2020 Franchise Tax Board return
D. 2020 Internal Revenue Service return
E. 6 months of profit and loss statements
F. 6 months of bank statements and/or financial statements

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

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the debtor, Manuel Curiel and Ruth E. Curiel ("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.

FINAL RULINGS

34.	**21-20109-E-13 DPC-3**	**LARRY/DEBRA JACKSON Robert Huckaby**	**OBJECTION TO CLAIM OF EMPLOYMENT DEVELOPMENT DEPARTMENT, CLAIM NUMBER 15 2-14-23 [140]**

Final Ruling: No appearance at the April 11, 2023 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on February 14, 2023. By the court's calculation, 56 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

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

The Objection to Proof of Claim Number 15 of Employment Development Department is sustained, and the claim is disallowed in its entirety.

David Cusick, the Chapter 13 Trustee, ("Objector") requests that the court disallow the claim of Employment Development Department ("Creditor"), Proof of Claim No. 15 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $9,219.58. Objector asserts that the Claim has not been timely filed. *See* FED. R. BANKR. P. 3002(c). The deadline for filing proofs of claim in this case for governmental units was July 13, 2021. Notice of Meeting of Creditors, Dckt. 16. Objector requests the claim to be disallowed for being untimely, in addition, the claim improperly includes post-petition taxes.

DISCUSSION

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

A proof of claim filed by a governmental unit is timely if it is filed not later than 180 days after the date of the order for relief or sixty days from the filing of tax returns under § 1308. FED. R. BANKR. P. 3002(c)(1). Creditor's Proof of Claim was filed on February 15, 2022. The deadline for filing a proof of claim as a governmental unit in this matter was July 13, 2021, 180 days after the date of the order for relief. Additionally, based upon the courts review of the claim, it is unclear whether Debtor delayed in filing returns which caused Creditor to file their Proof of Claim late, but within sixty days of these late tax returns.

Even if the Proof of Claim were timely, due to Debtor's delayed filing of tax returns, § 1308 only allows pre-petition obligations to be included in the Proof of Claim. The claim includes post-petition taxes in the amount of $377.64 for obligations arising in the 2021 tax year. *See* Attachment to Proof of Claim 15-1. Even if the Proof of Claim for obligations before the filing date were timely, Creditor will still be disallowed for any post-petition obligations.

At the hearing, XXXXXXXXXX

~~Based on the evidence before the court, Creditor's claim is disallowed in its entirety as untimely. 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 Employment Development Department ("Creditor") filed in this case by David Cusick, the Chapter 13 Trustee, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the Objection to Proof of Claim Number 15 of Employment Development Department is sustained, and the claim is disallowed in its entirety.~~

35. 21-23024-E-13 BLG-2 | **WILLIAM PITTS** **Chad Johnson** | **MOTION TO MODIFY PLAN** **2-24-23 [34]**

Final Ruling: No appearance at the April 11, 2023 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, and Office of the United States Trustee on February 24 2023. By the court's calculation, 46 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy 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 William Louis Pitts ("Debtor"), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on March 22, 2023. Dckt. 42. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, William Louis Pitts ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on February 24, 2023, 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.

36. 22-21935-E-13 MWB-2 | **TAMMY RANDOLPH** | **MOTION TO CONFIRM PLAN**
Mark Briden | **2-21-23 [37]**

36 thru 37

Final Ruling: No appearance at the March 11, 2023 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors and parties in interest, and Office of the United States Trustee. The court is unsure of the date service was effectuated as the Proof of Service lists the date of service as February 2023, and the date of execution as February 21, 2023. Assuming that the date of execution was also the date of service, the court calculates that 49 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1). At the hearing, xxxxx.

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 filed as Docket Entry 37 has been replaced by the same Motion filed at Docket 42. The court removes this matter from the Calendar, the Motion filed at Docket 37 having been superceded by the Motion filed at Docket 42.

It appears to the Court that this Motion was inadvertently docketed twice. The Court will make its ruling on the Motion filed as docket 42 and its supporting documents numbers 38 - 41.

37. 22-21935-E-13 MWB-2 | **TAMMY RANDOLPH** | **MOTION TO CONFIRM PLAN**
Mark Briden | **2-21-23 [42]**

Final Ruling: No appearance at the March 11, 2023 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors and parties in interest, and Office of the United States Trustee. The court is unsure of the date service was effectuated as the Proof of Service lists the date of service as February 2023, and the date of execution as February 21, 2023. Assuming that the date of execution was also the date of service, the court calculates that 49 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1). At the hearing, xxxxx.

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).

This docket entry appears to be a duplicate and docketed in error. The ruling on the Motion to Confirm Amended Plan, Docket Control No. MWB-2, is found under Docket 37.

The debtor, Tammy Randolf ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan (dckt. 39) provides for:

1. $600 to be paid into the plan monthly from September 25, 2022 to September 25, 2024.

2. Debtor will pay off the plan within 24 months with proceeds from the sale of real property located at 155 West Oak Ave, Hayfork, CA.

3. Debtor notes they are attempting to sell several different 40 acre parcels in Shasta County, CA.

4. $15.00 per month to be paid to the Trinity County Tax Collector as well as the Shasta County Tax Collector, with the remainder to be paid off in full from the sale of the Trinity County property.

5. $125.00 per month for 2 years and be paid off in full from sale of Trinity County property.

6. $85 per month to be paid in attorney's fees, with the remainder of attorney's fees to be paid off in full upon the sale of the Trinity County property.

Amended Plan, Dckt. 39. 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 28, 2023. Dckt. 49. Trustee opposes confirmation of the Plan on the basis that:

1. Trustee cannot assess the feasibility of the Plan due to a lack of information.

   (A) Unclear if the page attached to the back of the Plan constitutes non-standard provisions, as they lack clear identification.

   (B) Unclear which 40 acre parcels are being sold. Unclear how the funds will be paid into the Plan.

   (C) Unclear what the collateral for the Trinity County Tax Collector is. Unclear if the Trinity County Grants Department is the same creditor as Trinity County Tax.

   (D) Unclear what the collateral for the Shasta County Tax Collector is.

   (E) There is an unclear reference to a class 1 creditor identified as "Trinity County 1 TD Hayford."

   (F) Nonstandard provision §7.05 is unclear and appears to carry a typographical error. It reads "Debtor to pay $125.00 per month for 2 years and be paid off in full from sale of the Trinity County property."

   (G) Debtor has failed to amend Schedule J to clarify which of the seven properties the Debtor is intending to pay monthly insurance premiums and property taxes to. The Trustee is also concerned that the plan does not contain enough monthly payments to cover property taxes and insurance premiums for all seven properties.

(H) Debtor has failed to amend Schedules A/B to include jewelry and electronics.

2. Motion and Declaration fail to state the grounds of the motion with particularity, as required by Federal Rule of Bankruptcy Procedure 9013 and Local Bankruptcy Rule 9014-1(d)(3)(A). Trustee supports this contention by noting that:

(A) Debtor's Motion to Confirm Second Amended Chapter 13 Plan "does not provide any information that would be of use to the parties, such as a description of the Plan, an explanation as to what has changed, and a summary of prior events that have brought the Debtor to file a Second Amended Plan." Dckt. 49, page 3.

(B) Debtor's Declarations do not provide any specific information regarding the sale of any properties.

(C) Debtor's lacking and inconsistent information has "caused tremendous amount of unnecessary work for Trustee."

DEBTOR'S RESPONSE

Debtor filed a response on March 30, 2023. Dckt. 52. Debtor agreed that the motion should be denied and an Amended plan should be filed. Debtor also communicated that:

1. The page attached to the back of the Plan does describe the non-standard provisions of the Plan.

2. "The debtor has several 40 acre parcels for sale located in Shasta county."

3. "The collateral for Trinity County Tax Collector is 155 West Street, Hayfork Ca Trinity County."

4. "The Shasta County Tax Collector is secured by all parcels in Shasta County, CA."

5. "The Chapter 13 plan includes on-going mortgage payment to Trinity County Grant Departments."

6. "Debtor will amend Schedule A/B."

DISCUSSION

Trustee's objections bear merit, and Debtor has agreed that the motion should be denied. This is cause to deny the motion.

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, Tammy Randolph ("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.

38. 23-20241-E-13 SKI-1 | **DAVID/FAITH VALENZUELA** | **Mo Mokarram** | **OBJECTION TO CONFIRMATION OF PLAN BY SANTANDER CONSUMER USA INC.** | **3-7-23 [14]**

Final Ruling: No appearance at the March 11, 2023 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee and Office of the United States Trustee on March 7, 2023. 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.

The Order overruling the Objection to Confirmation having been entered (Dckt. 22) this matter is removed from the Calendar.

39. 21-20244-E-13 DPC-2 | **KAREN MILLER** / **Mo Mokarram** | **OBJECTION TO CLAIM OF INTERNAL REVENUE SERVICE, CLAIM NUMBER 7** / **2-14-23 [31]**

WITHDRAWN BY M.P.

Final Ruling: No appearance at the April 11, 2023 hearing is required.

David P. Cusick ("the Chapter 13 Trustee") having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Objection to Claim was dismissed without prejudice, and the matter is removed from the calendar.**

40. 23-20260-E-13 DPC-1 | **VADIM KURUDIMOV** / **Mark Shmorgon** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** / **3-9-23 [18]**

DEBTOR DISMISSED: 3/13/23

Final Ruling: No appearance at the April 11, 2023 hearing is required.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Confirmation of Plan having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is overruled as moot, the case having been dismissed.