UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

April 12, 2022 at 2:00 p.m.

1.	**22-20290-E-13** **DPC-1**	**ROBERT/CHERYL HARGRAVE** **Julius Cherry**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **3-15-22 [15]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on March 15, 2022. 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. Robert Elwood Hargrave and Cheryl June Hargrave ("Debtor") failed to provide proof of social security number.

B. Improper signature line on Chapter 13 Plan.

DISCUSSION

Trustee's objections are well-taken.

Failure to Provide Proof of Social Security Number

Trustee notes that Debtor failed to submit adequate proof of their social security number at the Meeting of Creditors on March 10, 2022. Dckt. 15. Mr. Hargrave's social security card was illegible and Mrs. Hargrave stated she could not locate her social security card and applied for a replacement on March 2, 2022, which she has yet to receive. *Id.* The meeting was continued to March 24, 2022, however, Trustee has not provided a status report or any update to the court in connection with Debtor's social security numbers.

Improper Signature Line

Trustee references the last page of Debtor's Chapter 13 Plan (Dckt. 3 at 6) and states that Mr. Hargrave's full printed name does not appear below the signature line. Dckt 15. Rather, the printed name under Mr. Hargrave's signature line is 'Joseph John Reichmann.' *Id.* Debtor has not filed anything with the court to rectify or explain this error.

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.

2. **21-24140-E-13 MS-1** **TIMOFEY RYZHUK** **Mark Shmorgon** **MOTION TO MODIFY PLAN** **2-25-22 [22]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 25, 2022. By the court's calculation, 46 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is continued to xxxx at xxxx.

The debtor, Timofey Ryzhuk ("Debtor") seeks confirmation of the Modified Plan to restructure his secured claims and to deal with overwhelming unsecured debt. Declaration, Dckt. 25. The Modified Plan provides payments of $696.00 for 38 months, and a 0.00 percent dividend to unsecured claims totaling $53,565.07. Modified Plan, Dckt. 24. 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 22, 2022. Dckt. 31. Trustee opposes confirmation of the Plan on the basis that:

A. The plan may not pay unsecured claims what they would receive in the event of liquidation. However, Trustee requests the court to continue the matter for 60-90 days to allow for potential discovery and a claim objection as to creditor U.S. Bank National Association, (Claim #4).

DISCUSSION

Debtor Fails Liquidation Analysis

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). The Chapter 13 Trustee states that Claim #4 asserts a secured claim of $19,671.84 based on, "All assets described under the contract's security provision," with the basis for perfection. Additionally, a review of Debtor's Schedule of property does show assets including $1,076.29 in cash, accounts, and a security deposit, and $72,500.00 in vehicles and trailers.

Insufficient Information

Debtor has supplied insufficient information relating to the assets to assist the Chapter 13 Trustee in determining the value of the assets. Debtor fails to report the certificates of title for these vehicles attached to the claim, nor any explanation indicating that an exception applies.

~~The Modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is not confirmed.~~

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

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

~~The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Timofey Ryzhuk ("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 continued to xxxx at xxxx.~~

3. **21-23898-E-13 MOH-1** | **ANGELLO/DONNA AUSTIN Michael Hays** | **MOTION TO CONFIRM PLAN 2-16-22 [29]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on February 16, 2022. By the court's calculation, 55 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is ~~granted~~.

The debtor, Angello Edwards Austin and Donna M. Austin ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for $74.00 monthly payments to be made beginning December 25, 2021 and continuing on the 25th day thereafter for the duration of Debtor's 36-month plan. Amended Plan, Dckt. 31. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CREDITOR'S OPPOSITION

The United States Department of Housing and Urban Development ("Creditor") holding a secured claim filed an Opposition on March 22, 2022. Dckt. 38. Creditor's claim is secured by a reverse mortgage on Debtor's residence. *Id.* at 1.

Creditor notes that Section 3.08 of Debtor's Amended Chapter 13 Plan makes the anti-modification provisions of 11 U.S.C. § 1322(b) part of the Plan. *Id.* at 2. Creditor requests that the Plan additionally include a provision expressly providing that "Debtor will comply with the substitution of collateral procedures and any available proceeds from insurance will be sent to [Creditor] to keep in escrow." *Id.* Creditor opposes confirmation of the Amended Plan unless this provision is included and

makes clear that Debtor will comply with the provisions of the reverse mortgage. *Id.*

CHAPTER 13 TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David P. Cusick ("Trustee") responded to Debtor's Motion to Confirm First Amended Plan on March 24, 2022. Dckt. 40. In his response, Trustee explicitly states that he does not oppose the Amended Plan. *Id.* Trustee states that he would not oppose the addition of Creditor's requested provision if the court agrees to add it in the Order Confirming Debtor's Plan. *Id.*

DEBTOR'S RESPONSE

On March 29, 2022, Debtor filed a response stating they are fully okay with the additional provision as long as Creditor is referring to any future proceeds they may receive.

At the hearing xxxxxxxxxxxxxxx.

~~The Amended Plan complies with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is confirmed.~~

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

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

~~The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Angello Edwards Austin and Donna M. Austin ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on February 16, 2022, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

~~**IT IS FURTHER ORDERED** that Debtor's Amended Chapter 13 Plan include an express provision providing that "Debtor will comply with the substitution of collateral procedures and any available proceeds from insurance will be sent to HUD to keep in escrow."~~

4.	**21-23704-E-13 DPC-1**	**KEITH/KELLY SPENCER Randall Ensminger**	**OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE DAVID P. CUSICK 3-17-22 [42]**

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 17, 2022. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

B. Debtor failed to address numerous payments made to creditors prior to conversion.

C. Schedule I is inaccurate based on Debtor's pay advices and Debtor has not amended Schedule J since the filing of this case and the current schedule indicates that Debtor has $197.00 in monthly net income and is unable to make Plan payments.

D. It is unclear from Debtor's filings the amount that Debtor's Counsel is expected to receive under the Plan.

DISCUSSION

Trustee's objections are well-taken.

Failure to Afford Plan Payment / Cannot Comply with the Plan

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

Schedule I is inaccurate based on Debtor's pay advices and Debtor has not supplemented Schedule J since the filing of this case and the current schedule indicates that Debtor has $197.00 in monthly net income which indicates Debtor is unable to make Plan payments of $1,220.00 per month beginning on June 25, 2022.

Class 2 identifies Capital One and School Financial Credit Union for a 2019 Subaru Impreza and proposes payments begin in March 2022. Capital One filed a Proof of Claim in the amount of $3,826.42. Proof of Claim No. 3. Schools First Federal Credit Union filed a Proof of Claim in the amount of $4,948.00. Proof of Claim No. 6.

Debtor testified at the First Meeting of Creditors that they have been making ongoing payments since the filing of the case which is not disclosed in Section 7 - Non-Standard Provisions of the Plan. The trustee requires amounts paid to these creditors so they are not overpaid.

It is unclear from Debtor's filings the amount that Debtor's Counsel is expected to receive under the Plan.

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

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

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

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

5. **22-20209-E-13 DPC-1** **RUBEN URANGA** **Mikalah Liviakis** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **3-7-22 [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)(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 7, 2022. 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. Ruben Mario Uranga ("Debtor") may not be able to make the Plan payments because Debtor's Plan relies on a pending motion and Debtor may not have filed all tax returns.

DEBTOR'S RESPONSE

Debtor filed a Response to Trustee's Objection on March 21, 2022. See Dckt. 31. Debtor stated that he was not required to file tax returns for the 2018-2020 tax years due to insufficient income. *Id*. Debtor is currently working to prepare and file his 2021 tax return on time, before the April 17, 2022 due date. *Id.*

DISCUSSION

Trustee's objections are well-taken.

Plan Relies on Pending Motion

Debtor's Plan relies on the court's granting of Debtor's Motion to Value Collateral of OneMain Financial. Dckt. 23 at 2:2-3. The court heard and granted the Motion on March 15, 2022. See Order, Dckt. 30. Thus, this objection is no longer at issue.

Failure to File Tax Returns

Debtor admitted at the Meeting of Creditors on March 3, 2022 that the federal income tax return for the 2018-2020 tax years have not been filed because his income was insufficient. Dckt. 23 at 2:10-11. Debtor explained he was not required to file tax returns for the 2018-2020 tax years due to insufficient income. Dckt. 31.

However, the Internal Revenue Service ("IRS") filed a Proof of Claim indicating that Debtor may have had some tax responsibility for 2018-2020. See Claim 2-1. Therefore, it is possible that Debtor was required to file tax returns for those three years. Debtor needs to either file their 2018-2020 tax returns, or the IRS needs to confirm that they have no claim and that Debtor had no tax responsibility for those years. Pursuant to 11 U.S.C. § 1308(a), if a debtor was required to file a tax return "under applicable nonbankruptcy law" but failed to do so, the debtor cannot enjoy the luxuries of bankruptcy.

At the hearing, XXXXXXXXXX

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.

6.	**22-20228-E-13** **DPC-1**	**JUAN GRANADOZ** **Linda Deos**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **3-17-22 [13]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on March 17, 2022. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. 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. Juan Manuel Granadoz ("Debtor") may not be able to make plan payments because the Plan is overextended and Schedule D and Schedule J are silent as to a claim for Americredit Financial Services, Inc.

DISCUSSION

Trustee's objections are well-taken.

Tax Obligations

The Internal Revenue Service ("IRS") filed a Proof of Claim identifying an unsecured priority claim in the amount of $55,152.99. See Proof of Claim 5-1. This is the figure Trustee relied upon in calculating Debtor's over-extended Plan. However, the IRS filed an amended Proof of Claim identifying an updated priority claim in the amount of $42,032.19. See Proof of Claim 5-2. This still overextends the plan, as the plan accounts for only $28,096.00 in priority claims. The IRS's amended Claim also indicates that Debtor has filed the their 2019 tax return, which addresses the Trustee's concern with regards to Debtor's tax obligations to the IRS.

The Franchise Tax Board's ("FTB") Proof of Claim identifies an unsecured priority claim in the amount of $11,285.22. See Proof of Claim 8-1. The FTB's Proof of Claim indicates that Debtor failed to file their 2019 tax return to the FTB. *Id.* Unlike the IRS, the FTB has not filed an amended Proof of Claim to the court. Thus, Debtor may still have an unresolved tax obligation they need to fulfill prior to confirmation of their proposed Plan. 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

Americredit Financial Services, Inc. dba GM Financial ("Creditor") asserts a claim of $3,369.34 in this case. See Claim 2-1. Creditor's claim is secured by a 2010 Mercedes SC300. *Id*. Trustee notes this secured claim is not listed in Debtor's Schedule D and there is no expense listed on Debtor's Schedule J which provides payments for this claim. Dckt. 13 at 2:13-15. The vehicle does appear on Debtor's Schedule A/B. *Id.* at 2:15-16. Trustee additionally notes that this claim was present in Debtor's prior case which was dismissed on July 23, 2021 (18-24876, see Claim 1-1). *Id.* at 2:16-17. In Debtor's prior case, the secured portion of the claim was paid but not the unsecured portion. *Id.* at 2:17-18.

Trustee 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. 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). That is reason to sustain the Objection.

Plan Term Exceeds 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 88 months accounting for the IRS's and FTB's nonsecured priority claims. Dckt 13. Debtor's petition estimates about $28,096.00 in nonsecured priority claims. Dckt. 1 at 9. However, the claims identified by the IRS and FTB indicate that Debtor has $53,317.41 total in priority claims. See Proof of Claims 5-2 and 8-1. Pursuant to section 3.02 of the Plan, all proof of claims shall determine the amount of a claim, not the plan or schedules, unless court order. Under Debtor's proposed monthly Plan payment of $1,465.00, Debtor would need to make payments for an additional 19 months past the permitted 60 months.

Thus, Debtor's proposed Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

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.

7. **22-20328-E-13 PGM-1** **MAXIMILIAN ROSA** **Peter Macaluso** **MOTION TO VALUE COLLATERAL OF TRUIST BANK** **3-1-22 [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.

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, Truist Bank, and Office of the United States Trustee on March 1, 2022. By the court's calculation, 42 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Value Collateral and Secured Claim of Truist Bank ("Creditor") is denied.

The Motion filed by Maximilian Emmett Rosa ("Debtor") to value the secured claim of Truist Bank ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 16. Debtor is the owner of a 2016 Toyota Corolla ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $9,600.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David P. Cusick ("Trustee") filed a Response to Debtor's Motion to Value Collateral on March 21, 2022. See Dckt. 21. Trustee objects on the following grounds:

A. Debtor's Motion fails to state legal grounds with particularity.

B. Debtor's valuation of the collateral conflicts with the plan, which states, "The Class 2 claim of Regional Acpt Corp is disputed and not subject to payment as the Debtor

received a 1099-C, cancelling of debt in December 2021." Plan, Dckt. 3 at 7.

DISCUSSION

Request For Relief Not Stated With Particularity

Here, Debtor does not state the legal basis for the request relief required under the Local Rules and Federal Rules of Bankruptcy Procedure. Debtor merely states facts and a requests for their Motion to be granted.

The Supreme Court requires that the motion itself state with particularity the grounds upon which the relief is requested. FED. R. BANKR. P. 9013. That "state with particularity" requirement is not unique to the Bankruptcy Rules and is also found in Federal Rule of Civil Procedure 7(b).

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, applied the general pleading requirements enunciated by the United States Supreme Court to the pleading with particularity requirement of Bankruptcy Rule 9013. *See* 434 B.R. 644, 646 (N.D. Ala. 2010) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007)). The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal* to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court. *See* 556 U.S. 662 (2009).

Federal Rule of Bankruptcy Procedure 9013 incorporates the "state with particularity" requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules of Civil Procedure and of Bankruptcy Procedure, the Supreme Court endorsed a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the "short and plain statement" standard for a complaint.

Furthermore, Local Rule 9014-1 provides that "[t]he application, motion, contested matter, or other request for relief shall set forth the relief or order sought and shall state with particularity the factual and legal grounds therefor. Legal grounds for the relief sought means citation to the statute, rule, case, or common law doctrine that forms the basis of the moving party's request but does not include a discussion of those authorities or argument for their applicability."

While it may appear to be "obvious" that the relief is sought pursuant to 11 U.S.C. § 506(a), it is even more obvious that such could be simply stated in the Motion. If the court were to state the legal grounds for Debtor, then Debtor's counsel and that counsel's staff might conclude that there is a range of motions in which the legal grounds "don't really matter."

The Trustee also directs the court to Debtor's Plan which states that no debt exists. If there is no debt, then there is no secured claim to be valued.

ADDITIONAL PROVISIONS:

The Class 2 claim of Regional Acpt Corp is disputed and not subject to payment as the Debtor received a 1099-C,

Plan, Additional Provisions; Dckt. 3. Taken at Debtor's word, there is no claim to value.

In sum, citing the legal basis supporting one's position for relief is required and failure to do so is cause for denial, 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 Maximilian Emmett Rosa ("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.

8. **22-20233-E-13 DPC-1** **SEVERO SIMUNDO** **Jeanne Serrano** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **3-15-22 [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)(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 16, 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. 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 has failed to provide the Trustee with 60 days of employer payment advices received prior to the filing of the petition.

B. Debtor has failed to provide the Trustee with a tax transcript or a copy of his/her Federal Income Tax Return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such documentation exists.

C. Debtor's Plan may not be Debtor's best efforts because Debtor is above the median income, however, it appears he may have additional disposable income to pay towards the Plan. The Plan proposes to pay

> $1,500.00 per month with no less than 33.98% to the unsecured creditors.

DISCUSSION

Trustee's objections are well-taken.

Failure to Provide Pay Stubs / 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 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).

Failure to Provide Disposable Income / Not Best Effort

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.

Debtor lists his gross income as $9,852.95, per month, and his net income as $4,968.28. Debtor lists his monthly expenses as $5,698.25 leaving his net monthly disposable income as $1,750.03. That amount shows there is at least $250.00 more a month that Debtor could pay to creditors which would result in the unsecured creditors receiving at least an additional $15,000.00 over 60 months.

Further, Debtor's income is above the median income and shows $2,592.06 of calculated monthly disposable income on Form 122C-2. If this number is correct, then the Debtor is not paying all of his monthly disposable income pursuant to § 1325(b)(2) and based on his Schedule I and J, there is certainly room in his budget to increase his plan payments to do so. The difference between the proposed plan payment to the calculated monthly disposable income is $1,092.06, which would be an additional $65,523.06 over 60 months.

In looking at Debtor's Schedule I, his withholding for taxes and Social Security is 25% of Debtor's gross wages. There are several other deductions which are not clearly identifiable.

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

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

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

9. **22-20239-E-13 PGM-2** **BETHANY JOHNSON** **Peter Macaluso** **MOTION TO VALUE COLLATERAL OF EXETER FINANCE, LLC** **2-28-22 [27]**

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, Creditor, parties requesting special notice, and Office of the United States Trustee on February 28, 2022 By the court's calculation, 43 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Value Collateral and Secured Claim of Exeter Finance, LLC ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $7,000.00.

The Motion filed by Bethany Elaine Johnson ("Debtor") to value the secured claim of Exeter Finance, LLC ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 29. Debtor is the owner of a 2013 Chrysler 300 ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $7,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004). Debtor's Declaration alleges various broken parts on the vehicle, reducing its value. Dckt. 29.

CREDITOR'S OBJECTION

On March 14, 2022, Exeter Finance, LLC ("Creditor") filed an Objection to Debtor's Motion to Value Collateral. Dckt. 37. Creditor states:

A. Debtor has not valued the Collateral adequately.

B. Creditor is entitled to receive payment on the full replacement value of the Collateral. The estimated replacement value a retail merchant would charge for the Collateral is $10,431.00. A copy of Creditor's vehicle valuation is attached as Exhibit C. Dckt. 39. Hence, the secured portion of Creditor's interest should be increased to at least this amount.

C. To the extent that Debtor's Motion does not value the Collateral at least $10,431.00, Creditor objects.

TRUSTEE'S RESPONSE

On March 22, 2022, David P. Cusick, Chapter 13 Trustee, filed a Response to Debtor's Motion to Value Collateral. Dckt. 43. Trustee states he is not opposed to the motion, while Creditor has also proposed a reasonable value, it is not clear to the Trustee if the Creditor has considered any deduction for issues noted by the Debtor.

DEBTOR'S RESPONSE

On March 28, 2022, Bethany Elaine Johnson, Debtor, filed a Reply to Creditor's Objection. Dckt. 45. Debtor states Creditor has submitted no evidence in which to support a disputed fact of value and there is no admissible fact disputed to the value. Further hearings are not required and the court should rule on the motion.

The court notes, however, Creditor has submitted and have properly authenticated Exhibit C, a Kelly Blue Book valuation. The report is accepted as a market report or commercial publication generally relied on by the public or by persons in the automobile sale business. FED. R. EVID. 803(17).

What Creditor has not done, however, is considered the deduction in value due to the issues noted by Debtor.

DISCUSSION

In his Declaration, Debtor provides testimony of the condition of the vehicle, which condition effects the value of the vehicle, as opposed to a Kelly Blue Book showroom ready, vehicle:

> 6. The following items are broken, damaged and/or are in need of repair:
>
> A. Front suspension pulls left - wears tires out
>
> B. Transmission slipping - needs repair
>
> C. Oil leak - slow leak (valves)
>
> D. Brakes, rotors, shocks, struts
>
> E. Electrical issues

F. Cracked windshield

G. Tune up for severe weather

H. Leather seats cracking in back

Declaration, ¶ 6; Dckt. 29. Taking the above items into consideration, an adjustment from the showroom ready retail sale value of $10,431.00 of ($3,431.00) is reasonable, resulting in a current condition retail sale value of $7,000.00.

The lien on the Vehicle's title secures a purchase-money loan incurred on June 2018, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $15,825.44. Proof of Claim, No. 3-1. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of $7,000.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue 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 Bethany Elaine Johnson ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Exeter Finance, LLC ("Creditor") secured by an asset described as 2013 Chrysler 300 ("Vehicle") is determined to be a secured claim in the amount of $7,000.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $7,000.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

10. **20-23443-E-13 BLG-5** **10 thru 11**

TONI PAINTER
Chad Johnson

MOTION TO SELL FREE AND CLEAR OF LIENS
2-23-22 [66]

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, 2022. By the court's calculation, 48 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion to Sell Property is granted.

The Bankruptcy Code permits Toni Hendricks Painter, Chapter 13 Debtor, ("Movant") to sell property of the estate or under the confirmed plan after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the personal property commonly known as 2017 Chevrolet Impala Vin ending in #3513 ("Vehicle").

There is no proposed purchaser of the Vehicle. However, Debtor has been in communication with various auto dealerships who believe she would be able to sell for between $14,000-$16,500. Additionally, she received an appraised value of $17,250 on or about August 18, 2021.

Sale Free and Clear of Liens

The Motion seeks to sell the Property free and clear of the lien of Ally Financial ("Creditor"). The Bankruptcy Code provides for the sale of estate property free and clear of liens in the following specified circumstances,

> (f) The trustee [debtor in possession, or Chapter 13 debtor] may sell property under subsection (b) or (c) of this section free and clear of any interest in such

property of an entity other than the estate, only if–

(1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;

(2) such entity consents;

(3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;

(4) such interest is in bona fide dispute; or

(5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f)(1)–(5).

For this Motion, Movant has established Creditor has been paid in full pursuant to the confirmed plan. However, Creditor has not released the lien. Debtor states that if the claim were paid at the contract rate, rather than the Plan interest rate, then there would be an additional $60.00 owed. Since Creditor has not released the lien, it may be that Creditor asserts there is some additional amount owning. Under the Bankruptcy Code allows Creditor to be paid only on its secured claim in this case and the sales proceeds are sufficient to pay any remaining amount, approving the sale pursuant to 11 U.S.C. § 363(f)(3) is proper.

DISCUSSION

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because Debtor no longer needs the vehicle and it allows no less than $14,000.00 to be paid to creditors.

Request for Mandatory Injunction

In addition to the court ordering the sale free and clear, as a matter of federal law, of Creditor's lien, Debtor also requests that the court order Creditor to file a release of its lien within 15 days of the filing of the court's order.

Debtor's Motion does not state the legal basis for this court issuing a mandatory injunction pursuant to a motion to sell under 11 U.S.C. § 363. Additionally, Debtor does not address the requirements of the Supreme Court set forth in Federal Rule of Bankruptcy Procedure 7001 that injunctive relief must be sought by adversary proceeding.

The court denies without prejudice Debtor's request for a mandatory injunction.

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

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

The Motion to Sell Property filed by Toni Hendricks Painter, 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 Toni Hendricks Painter, Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) for no less than $14,000.00, the Property commonly known as 2017 Chevrolet Impala Vin ending in #3513 ("Property"), on the following terms:

A. The Property shall be sold for no less than $14,000.00 and as further provided in this Order.

B. The sale proceeds shall first be applied to closing costs and other customary and contractual costs and expenses incurred to effectuate the sale.

C. The Property is sold free and clear of the lien of Ally Financial ("Creditor"), Creditor asserting a secured claim, pursuant to 11 U.S.C. § 363(f)(3), with the lien of such creditor attaching to the proceeds.

E. Within seven (7) days of receipt of funds from the sale, Debtor shall turn over the proceeds and provide a copy of the bill of sale to The Chapter 13 Trustee. The Chapter 13 Trustee shall hold the sale proceeds; after payment of the closing costs, other secured claims, and amount provided in this order; pending further order of the court.

F. Chapter 13 Debtor is authorized to execute any and all documents reasonably necessary to effectuate the sale.

All other requested relief is denied without prejudice.

11. **22-20149-E-13 DPC-1** **MARIA MAGALLANES** **Michael Hays** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **3-7-22 [19]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on March 7, 2022. By the court's calculation, 31 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 fails the liquidation analysis.

DISCUSSION

Trustee's objections are well-taken.

Debtor Fails Liquidation Analysis

Debtor's plan fails the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Trustee states that there are several pieces of property listed on Schedule A and B that are not fully exempted. Moreover, Debtor will receive a combined tax refund of $2,228.00. Trustee calculates that the

liquidation amount would be $7,455.20. Upon the court's independent review, the liquidation amount is as follows:

2020 Honda Accord.....$983.20

2011 Toyota Corolla.....$3,707.00 (Upon court's review of Debtor's schedule, the value of the vehicle is $5,618.00 where the exemption claimed is $1,911.00 which would leave liquidation of $3,707.00. Trustee incorrectly claims the amount is $4,204.00)

Cash.....$40.00

2021 Tax Refunds.....$2,228.00

Total.....$6,958.20

The Chapter 13 Plan would only pay approximately $2,500.00.

DEBTOR'S RESPONSE TO TRUSTEE'S OBJECTION TO CONFIRMATION

On March 30, 2022, Debtor filed a Response to Trustee's Objection to Confirmation of Plan. Dckt. 26. Debtor asserts as follows:

1. The 10% dividend to unsecured creditors had been based on $1,414.00 in equity on the 2011 Honda Accord and $2,244.91 on the Toyota Corolla.

2. The total vehicle non equity of $7,862.91 less the $3,325.00 exemption results in a total of $4,577.91 for total non-exempt assets.

3. In a hypothetical Chapter 7 case the Trustee would retain 25% of the first $5,000.00 which would result in $1,144.48 for a net of $3,433.43 that would be available for payment.

4. Debtor is under the impression that they are allowed to keep the first $2,000 of combined state and federal tax return refunds.

5. Debtor is concerned that the Trustee is factoring in the $2,228.00 of tax refunds into excess equity to determine the dividend to creditors when Debtor is unsure if they will continue to receive such a refund in subsequent years.

6. If the Debtor is allowed to keep the first $2,000.00 of the tax refunds and remits the $228.00 excess to the Trustee the analysis is as follows:

    a. Unsecured claims were estimated at $25,369.00 in the Plan. As of March 30, 2022 unsecured claims total $23,706.86 with the bar date being April 1, 2022. No priority claims are expected to

be filed. If the Debtor pays $3,433.43 nonexempt equity over the life of her plan it will be a 14.48% dividend instead of the proposed 10% assuming no additional claims are filed prior to the claims bar date.

i. $2,780.00 was initially calculated for net nonexempt equity. $3,433.43 is an increase of $653.43. The Trustee's increase of 7% results in $699.17 additional amount to be paid over the life of the loan or an increase in payment to a proposed $646.00

ii. Debtor further represents that any combined tax refunds above $2,000.00 would be remitted to the Trustee over the life of the Plan through the 2026 tax year.

7. Debtor requests this amount could be provided for as an amendment to the Plan.

Debtor's proposed amendments to the Plan do not appear to resolve the Chapter 13 Trustee's concerns.

In reviewing Debtor's Response, several points arise. First, with respect to the vehicles, Debtor states that she has used the Kelly Blue Book private party sale value – not the retail sale value which Congress expressly requires in 11 U.S.C. § 506(a)(2) [emphasis added]:

> (2) If the **debtor is an individual** in a case under **chapter 7 or 13**, such value with respect to personal property securing an allowed claim shall be determined based on the replacement value of such property as of the date of the filing of the petition without deduction for costs of sale or marketing. With respect to property acquired for personal, family, or household purposes, **replacement value shall mean the price a retail merchant would charge for property of that kind** considering the age and condition of the property at the time value is determined.

Thus, it appears that the vehicles may be undervalued.

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 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.~~

12.	**22-20350-E-13** **ELH-1**	**EILEEN HECHT** **Gary Saunders**	**MOTION TO EXTEND AUTOMATIC STAY** **2-23-22 [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.

Movant has not specified clearly whether the Motion is noticed according to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). The Notice of Motion states that a hearing will be held to extend the automatic stay, and the hearing will be based upon submitted pleadings as well as argument at the hearing. Based upon language that there may submissions at the hearing, the court treats the Motion as being noticed according to Local Bankruptcy Rule 9014-1(f)(2). Counsel is reminded that not complying with the Local Bankruptcy Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(c)(l).

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 23, 2022. By the court's calculation, 48 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 xx 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 denied.

Eileen Leona Hecht ("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. 20-25093) was dismissed on October 26, 2021, after Debtor was delinquent in plan payments. *See* Order, Bankr. E.D. Cal. No. 20-25093, Dckt. 40, October 26, 2021. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions

of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because of technical errors through TFSbillpay and a failure of her previous counsel to properly file a Motion to Modify/Suspend Plan Payments.

Trustee's Opposition

The Chapter 13 Trustee filed an opposition stating notice and hearing occurred too late after the filing of the case, pursuant to 11 U.S.C. § 362(c)(3)(B).

PLEADINGS FILED AS ONE DOCUMENT

Debtor filed the Notice of Motion, Motion, Proof of Service, and Declaration in this matter as one document. That is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." LOCAL BANKR. R. 9004-2(c)(1). Counsel is reminded of the court's expectation that documents filed with this court comply as required by Local Bankruptcy Rule 9004-1(a). Failure to comply is cause to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

These document filing rules exist for a very practical reason. Operating in a near paperless environment, the motion, points and authorities, declarations, exhibits, requests for judicial notice, and other pleadings create an unworkable electronic document for the court (some running hundreds of pages). It is not for the court to provide secretarial services to attorneys and separate an omnibus electronic document into separate electronic documents that can then be used by the court.

APPLICABLE LAW

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). However, pursuant to 11 U.S.C. § 362(c)(3)(B), the notice and hearing must be completed within 30 days after the filing of the later case.

Here, the 30-day window closed on March 19, 2022. While this fell on a weekend, the statute requires that the hearing be concluded "before the expiration of the 30-day period." See 11 U.S.C. § 362(c)(3)(B); *In re Bronson*, Nos. 09-46592-A-13G, MB-1, 2010 Bankr. LEXIS 6486, at *3 (Bankr. E.D. Cal. Jan. 4, 2010). Therefore, a hearing should have been set for March 15 on the Chapter 13 Law and Motion Calendar in Courtroom 33.

Unfortunately for Debtor, the court cannot go against the plain language of the statute and usurp the Constitutional powers of Congress and the President of the United States.

Termination of the Stay Limited to the Debtor

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.

Debtor's Motion is denied and the automatic stay is terminated as to only the debtor.

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 Eileen Leona Hecht ("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 extend the automatic stay, which terminates only as to Debtor pursuant to 11 U.S.C. § 362(c)(3)(A) thirty days after the commencement of this case, is denied. No determination is made by the court to the other provisions of 11 U.S.C. § 362(a) that apply to property of the bankruptcy estate.

13. **22-20264-E-13 DPC-1** **AMANDA HILL** **Douglas Jacobs** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **3-16-22 [17]**

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the 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 16, 2022. 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 amount paid to unsecured creditors would be more under a hypothetical Chapter 7 liquidation.

1. Debtor received a total of $7,408.00 in income tax returns and failed to list the refunds on Schedule B or C.

2. Debtor is exempting a "PGE Campfire claim" in the amount of $48,649.51. The Trustee is unclear if the claim is for personal injury or property damage as the exemption claimed is for wrongful death.

3. The Plan shows the unsecured dividend as $67,858.83 which indicates Debtor should pay 100% instead of 0% to unsecured creditors.

B. The Debtor may lack the ability to make Plan payments.

1. The Plan contains a vague nonstandard provision in Section 7 which states that the Debtor will be receiving up to $21,343.95 from the PG&E Fire Victim Fund; however, the Debtor fails to provide a time line for when the funds will be received.

2. The amount of attorney's fees to be paid is unclear.

3. The Debtor's first plan payment in the amount of $2,309.99 is due prior to the hearing.

Debtor's Response

On March 29, 2022, Debtor filed a response (Dckt. 25) with the following unclear explanation regarding the Campfire Claim:

1. Debtor states they are expecting to receive $69,993.46 for their Campfire Claim, $48,649.51 of which is for personal injuries which she claims as exempt pursuant to California Code of Civil Procedure § 704.140(b) and $21,343.95 for real property.

2. $78,646.81 was awarded to Debtor for personal injuries, not including $42,853.18 of Camp Fire Attorney's Fees. The court notes this is contradictory to the above statement that they will receive $48,649.51.

3. Debtor needs all the funds from the CampFire Claim to provide for themself and their children. The court is unsure if this means all personal injury and property awards, or just personal injury.

4. The money from the CampFire will allow Debtor to make the Chapter 13 payments. This is contradictory to the above statement.

It is unclear to the court what portion of the CampFire funds Debtor will use to pay their payments. At the hearing, XXXXXXXXXX

DISCUSSION

Trustee's objections are well-taken.

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 received a total of $7,408.00 in income tax returns and failed to list the refunds on

Schedule B or C. Moreover, Debtor is exempting a "PGE Campfire claim" in the amount of $48,649.51. The Trustee is unclear if the claim is for personal injury or property damage as the exemption claimed is for wrongful death. Finally, the Plan shows the unsecured dividend as $67,858.83 which indicates Debtor should pay 100% instead of 0% to unsecured creditors.

Failure to Afford Plan Payment / Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The Plan contains a vague nonstandard provision in Section 7 which states that the Debtor will be receiving up to $21,343.95 from the PG&E Fire Victim Fund; however, the Debtor fails to provide a time line for when the funds will be received. Moreover, the amount of attorney's fees to be paid is unclear. Finally, the Debtor's first plan payment in the amount of $2,309.99 is due prior to the hearing. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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

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

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

14. **22-20066-E-13 DPC-1** **BONNIE PYEATT** **Michael Hays** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **3-8-22 [31]**

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the 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 8, 2022. 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. Debtor filed a superseding Plan without serving the document on interested parties and filing a Motion to Confirm Plan.

DEBTOR'S RESPONSE

Debtor filed a Response to Trustee's Objection to Confirmation on March 25, 2022. Dckt. 37. In the Response, Debtor represents as follows:

1. Counsel approached the filing of the documents in a manner consistent with past information they received from Kristen Koo that separate noticing and a motion to confirm was not necessary because the plans were identical.

2. Counsel thought it would be better practice to file a Notice of Withdrawal. After the Notice and subsequent Plan were filed, Counsel contacted the Trustee to request that the document be served when they noticed the case. The Trustee informed Counsel that he was obligated to serve the first plan which they did on February 7, 2022. Dckt. 23 and 24.

3. Counsel mailed Santander Consumer USA Inc. a copy of the Debtor's Notice to Santander Consumer USA Inc. and the attachments, Dckt. 28 and 29, informing the company of the accident and providing the insurance company information. Counsel additionally provided copies of the Notice of Meeting of Creditors and the subsequent Plan.

4. Counsel requests that the Plan be confirmed as the two plans are identical except for treatment of Santander in Class 3 and the amount of projected unsecured creditors at 3.14.

DISCUSSION

Trustee's objection is well-taken.

Failure to File and Serve Plan and File Motion to Confirm

Debtor has not served the modified Chapter 13 Plan or filed and served a motion to confirm as required by LBR 3015-1(d)(1). LBR 3015-1(d)(1) requires "that the debtor shall file and serve the modified chapter 13 plan together with a motion to confirm it and notice shall comply with Federal Rule of Bankruptcy Procedure 2002(a)(9) which requires twenty-one (21) days of notice of the time fixed for filing objections as well as LBR 9014-1(f)(1) requires twenty-eight (28) days' notice of the hearing and notice that opposition must be filed fourteen (14) days prior to the hearing. In order to comply with both Federal Rule of Bankruptcy Procedure 2002(b) and LBR 9014-1(f)(1) parties in interest shall be served at least thirty-five (35) days prior to the hearing." LBR 3015-1(d)(1). Failure to serve the plan and file and serve a motion to confirm is cause to deny confirmation. LBR 3015-1(d)(1).

The Plan does not comply with the Local Bankruptcy Rules. 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.

15. **22-20280-E-13 DPC-1** **ERNEST CRUZ Mohammad Mokarram** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 3-15-22 [27]**

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 15, 2022. 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 failed to appear at the First Meeting of Creditors held on March 10, 2022 at 10:00 a.m.

B. Debtor failed to provide a copy of his tax return or tax transcript for the most recent pre-petition tax year.

Trustee's Status Report

Trustee filed a status report on March 29, 2022 (Dckt. 33) stating:

1. Debtor appeared at the continued Meeting of Creditors.

2. Debtor provided 2020 tax returns.

3. Debtor admitted at Meeting of Creditors that real property at 470 Lampass Avenue, Sacramento, California was sold and debtor has $177,000.00 in his bank account and intends to bring arrears to Carrington Mortgage current.

4. No sale was approved for the Sacramento property.

5. Trustee requests the court sustain the Trustee's objection unless the court approves the sale of the property.

DISCUSSION

The Bankruptcy Code permits Debtor to sell property of the estate or under the confirmed plan after a noticed hearing. 11 U.S.C. §§ 363 and 1303. The Debtor is required to give notice of any proposed sale to provide opportunity for objections and for a hearing if there are objections.

"The debtor in possession or trustee must ensure 'parties in interest' adequate notice and opportunity to be heard before their interests may be adversely affected." *W. Auto Supply Co. v. Savage Arms* (In re Savage Indus.), 43 F.3d 714, 720 (1st Cir. 1994) (citing 11 U.S.C. § 363(b)). Additionally, Federal Rules of Bankruptcy Procedure 6004(a) requires notice of a proposed sale of property, other than cash collateral, not in the ordinary course of business, pursuant to Federal Rules of Bankruptcy Procedure 2002(a)(2), which requires 21 days' notice by mail to parties in interest. Approval of a proposed sale should be denied if necessary parties were not notified. 10 Collier on Bankruptcy P 6004.02 (16th 2022).

It appears the Debtor unilaterally sold the property at 470 Lampass Avenue, in Sacramento, California. This is in clear violation of rules 11 U.S.C. § 363; 1303 and Federal Rules of Bankruptcy Procedure 2002; 6004. It is difficult for Debtor to argue that the Plan has been proposed in good faith and the case prosecuted in good faith in light of these clear violations of the bankruptcy statutes.

The court notes, however, that Debtor now has $187,000.00 of funds to pay 100% to the creditors due to the proceeds from the sale. See Amended Schedules A and B, Dckt. 31. The total payments under the proposed plan equal $66,000.00 with 100% paid to nonpriority unsecured creditors. If Debtor seeks to move forward with a plan, Debtor would need retroactive approval of the court and to put forth a confirmable plan that includes the $187,000.00 of funds received from the sale of the Sacramento Property.

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.

16.	**22-20682-E-13** **MRL-1**	**LORRIE BLEVINS** **Mikalah Liviakis**	**MOTION TO VALUE COLLATERAL OF INTERNAL REVENUE SERVICE** **3-28-22 [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 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, and Creditor on March 28, 2022. By the court's calculation, 15 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 hearing on the Motion to Value Collateral and Secured Claim of the Internal Revenue Service is continued to 2:00 p.m. on xxxxxxx , 2022 ~~granted, and Creditor's secured claim is determined to have a value of $32,519.00.~~

The Motion filed by Lorrie Lane Blevins ("Debtor") to value the secured claim of the Internal Revenue Service ("IRS" or "Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 16. Debtor describes the following property being encumbered by the IRS lien for the ($113,602) tax debt:

A. Interests in Real Property. Debtor leases real property commonly known as Lot 24 42 Milestone El Dorado National Forest, with a Cabin thereon, from the National

Forest Service, (the "Real Property") which lease Debtor states has a value of $25,000.00.

B. Personal Property:

1. Cash on hand.....$100.00
2. Golden One Checking Account.....$ 957.00
3. Household Goods and Furnishings.....$1,500.00
4. Electronics.....$ 100.00
5. Clothes & Shoes.....$ 50.00
6. Jewelry.....$ 10.00
7. 2 dogs.....$ 1.00
8. American General Annuity.....$ 1.00, and
9. 2011 Chevrolet Silverado Pickup.....$5,500.00

the IRS collateral (the "Personal Property"). Debtor testifies that the Personal Property is encumbered by senior liens totaling ($3,700), which leaves a value of $7,510.00 in the Personal Property for the IRS secured claim. There are no liens encumbering Debtor's interests in the Real Property

Debtor seeks to value the Real Property and Personal Property at a replacement value of $11,219.00 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).

Based on these calculations of value and senior liens, Debtor values the IRS secured claim to be $32,519.00.

Information Under Penalty of Perjury on Debtor's Schedules

In her Declaration, Debtor testifies under penalty of perjury that the Personal Property (not identifying which) is encumbered by a ($3,700.00) debt secured by a senior lien. However, Debtor does not identify the creditor having such a lien. Declaration, ¶ 6; Dckt. 16.

On Schedule D, Debtor states under penalty of having only one creditor with a secured claim, that being Flagship Credit Acceptance, with a claim of ($3,700.00) which is secured by the vehicle.

On Schedule D the Debtor lists the IRS as having a secured claim, but neglected to identify that the federal tax lien encumbers Debtor's real property, identifying only the interest in the real property.

No Proofs of Claim Filed

Neither the IRS nor Flagship Credit Acceptance have filed proofs of claim in this case as of this time. This bankruptcy case was filed on March 22, 2022, so the failure to have filed proofs of claim in the past twenty-one (21) days is not surprising.

Continuance of Hearing

At this early, early stage of the bankruptcy case, the court has no evidence of the two secured claims, other than the Schedules and Debtor's declaration. With no proofs of claim filed, there cannot be disbursements on secured claims.

The court notes that in Debtor's prior bankruptcy case, 21-21639, filed on May 1, 2021 and dismissed on March 10, 2022, Flagship Credit Acceptance filed Proof of Claim 7-1 for a secured claim of ($4,352.56) and the IRS filed Proof of Claim 13-2 for a secured claim of ($113,604.00) priority claim of ($2,500), and general unsecured claim of ($54,663.35).

Given no claim having been filed in this case, valuing it premature.

At the hearing, XXXXXXXXXX

The hearing is continued to **xxxxxxx**

~~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 Value Collateral and Secured Claim filed by Lorrie Lane Blevins ("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 the Internal Revenue Service ("IRS" or "Creditor") secured by an asset described as real property commonly known as Lot 24 42 Milestone El Dorado National Forest, Cabin on Forest Service Land, Personal Property: cash on hand; Golden One, Checking Account; Household Goods and Furnishings; Electronics; Clothes & Shoes; Jewelry; 2 dogs; American General Annuity; and 2011 Chevrolet Silverado Pickup, and IRS secured claim ("Property") is determined to be a secured claim in the amount of $25,000.00, and the balance of the claim is an unsecured claim (whether priority or general unsecured claim) to be paid through the confirmed bankruptcy plan.~~

17. **22-20283-E-13 DPC-1** **CHARLENE OJASCASTRO** **Richard Jare** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **3-15-22 [26]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, on March 15, 2022. 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. Feasibility - The Trustee was not ale to review case documents and question the Debtor until March 24, 2022, so Trustee was not able to confirm if the plan meets the requirements under 11 U.S.C. § 1325.

Trustee's Status Report

On March 29, 2022, Trustee filed a status report stating the following outstanding issues:

A. Delinquency - Debtor is $2,860.00 delinquent in plan payments.

B. Ensminger Provisions - Debtor omits or revises the following

provisions:

1. Section 7.11 - **NonStandard Provisions for Mortgage Modification Adequate Protection**. States adequate protection payments payable to Freedom Mortgage Corporation shall be disbursed by the trustee as if it were a class 2 distribution of the plan.

2. Section 7.12 - **NonStandard Provisions for General conditions**. State "Freedom Mortgage Corporation (either as principal or servicer for its investor), despite prepetition arrears and monthly contract installment payments shall be paid as described under 7.14.

3. Section 7.14 - **Nonstandard Provisions of Adequate Protection Payment**. Fails to include most of the approved language and adds language not part of the approved language.

4. Section 7.16 - **Nonstandard Provisions Loan Modification**. Duplicative of Section 7.15.

5. Section 7.18 - **Nonstandard Provisions Events of Default**. Does not state debtor shall be in default under the terms of the plan and changes language from "modification" to "termination."

6. Section 7.19 - **Nonstandard Provisions - Termination of Stay**. Changes heading from "Modification of the Automatic Stay" to "Termination of the automatic Stay" and fails to incorporate all appropriate terms in the section.

Debtor's Attorney's Declaration to Authenticate Evidence

Debtor's Attorney did not file an opposition, however, Debtor's attorney provided his personal Declaration stating Debtor made a $2,860.00 payment through TFS. Dckt. 34. Additionally, they filed an exhibit which appears to show a processing transaction from March 31, 2022 in the amount of $2,860.00.

While it would be "obvious" even to the court that Debtor's response/opposition to the Objection to Confirmation is that the default has been cured, no such opposition is asserted. It is not for the court to state oppositions, and basic pleading requirements are not a slippy slope of seeing how deficient pleadings may be before the court actually enforces the Federal Rules enacted by the Supreme Court.

DISCUSSION

Delinquency

Debtor is $2,860.00 delinquent in plan payments, which represents one month of the $2,860.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

At the hearing, **xxxxxxx**

Ensminger Provisions

The "Ensminger Provisions" (the name being that of the consumer attorney who took the lead in developing this adequate protection method) are adequate protection provisions that were worked out with consumer and creditor attorneys during the mortgage meltdown of the Great Recession. Consumer debtors needed to be able to exercise their rights to have creditors consider in good faith loan modification proposals (some required by law) and to provide creditors with adequate protection (dollars) while the debtor diligently prosecuted the loan modification.

This court noted two lines of abuse in this context. First, some debtors, who had no financial ability to pay for even a modified loan, were using it as a process to live in the home for free while the loan modification process draaaaaaggggggeddddd on and on. For those cases, some bankruptcy judges allowed the confirmation process drag on for extended periods of time (in some cases years), with no payments being made by the debtor who continued to live in the house.

The other line of cases arose before judges who concluded that until a plan was confirmed, the debtor had to make the full contract payments, often times which amounts were not what the debtor was obligated to pay under the loan modification laws. Some less than scrupulous creditors and their attorneys (which did not include the two creditors in this case with secured claims or their highly respected attorneys) would draaaaaaaggggggg their feet on the loan modification application, prevent the plan from being confirmed, and then this line of judges would boot the debtor out of bankruptcy and dismiss their case.

The Ensminger Provision developed a legally and economically way to give the good faith debtors and a good faith creditors an opportunity to have the loan modification promptly addressed, the debtor paying a proper adequate protection payment (which, if not agreed by the parties, a rare event, would be an amount based on the value of the property, with a current market interest rate, amortized over thirty (30) years. This required the debtor to make a substantial payment (not getting to live in the house for free or next to nothing) and provided real money to the creditor for the period in which the loan modification application was diligently prosecuted by both the debtor and the creditor.

The relief from stay provisions bolstered the adequate protection and insured that the debtors who sought such process had a high likelihood of obtaining a loan modification.

The adequate protection was provided as a matter of Federal Law based on 11 U.S.C. § 361 enacted by Congress as part of the Bankruptcy Code. Rather than delaying the plan and having only a adequate protection payment being made to the one creditor with whom the loan modification was being sought, by making the adequate protection payments part of a confirmed plan, then all of the other

creditors could received their payments.

Attached hereto as "Addendum Ensminger" is text of an Ensminger provision as it had been updated in 2016.

In reviewing the revised Additional Provisions for adequate protection, the court identifies the following points:

1. Section 7.11. This states that the Adequate Protection Payments will be disbursed by the trustee in accordance with "the rank specified by applicable as if it were a class 2 distribution in this plan."

The court is unsure as to what "rank specified" in Class 2 has to do with an adequate protection payment being made under the Additional Provisions. The Adequate Protection payment must be made by the Trustee and is separate and apart from any "rankings" by Debtor in Class 2.

2. Section 7.14. This states that the Plan does not modify Creditor's rights and that an adequate protection payment of $2,367.61 shall be made monthly pending determination on the loan modification. It directs that the payments shall be allocated to the escrow for taxes and insurance, post-petition interest, and then principle.

3. Section 7.15.

   a. Upon completion of the loan modification agreement, a copy will be provided to the Trustee, which modification must be approved by the court.

   b. If the loan modification does not require the arrearage cure to be completed during the term of the Plan, then the Claim shall be paid as a Class 4 Claim. No modification of the Plan will be required if the Plan payments to the Trustee are reduced by an amount not exceeding the adequate protection amount.

It is not clear why there would not be a modified plan for the payment adjustment amount being obtained by an *ex parte* motion to make the record clear as to why the amount being paid is inconsistent with the amount stated in the confirmed plan that is of record in the case.

   c. If the arrearage cure must be made during the term of the Plan, then Creditor's claim shall be a Class 1 one claim paid through the Plan. Again, there will be no modification of the Plan so long as providing for the Class 1 claim does not change the distributions to other creditors.

Again, it appears that a simple order modifying the Plan to provide for the change in payments would be reasonable to create a clear record in this case.

4. Section 7.17. If Creditor denies a loan modification, then notice of

that shall be sent to Debtor and Debtor's counsel, who will then have fourteen days to file a modified plan and motion to confirm to provide for Creditor's claim.

5. 7.18. Nonstandard Provisions Event of Default. In this section, Debtor leaves out the provision which state that this provision for relief from the stay is "without prejudice for Creditor filing a motion for relief form the stay on any other grounds.

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.~~

ADDENDUM ENSMINGER

7.02 [Creditor Name] Secured Claim.

Creditor: [Creditor Name]'s claim ("Secured Claim") secured by a [priority] deed of trust recorded against the real property commonly known as [address of property] ("Collateral").

Notwithstanding the $xxxxxxx pre-petition arrearage and $**xxxxx** monthly contract installment set forth in Class 1, supra, the actual treatment for the [Creditor Name] secured claim shall be as set forth in these Additional Provisions for this Chapter 13 Plan.

7.02.1 Secured Claim Treatment

Confirmation of this plan provides for adequate protection of [Creditor Name]'s interest in the Collateral pending either the consensual modification of the Secured Claim or termination of the automatic stay and surrender of the Collateral as provided in this Section 7.02. Confirmation of the Plan **does not** modify the secured claim of [Creditor Name].

Upon the denial of a loan modification and Debtor's failure to timely file and serve a proposed modified plan and motion to confirm as provided in this Section 7.02, the treatment of [Creditor Name]'s secured claim is:

A. [Creditor Name]'s secured claim is a Class 3 Claim, with the added requirement that an order modifying the automatic stay must be obtained (which order documents that the denial of loan modification condition subsequent has occurred);

B. The Chapter 13 Trustee shall continue to make the adequate protection payments to Secured Creditor from the regular monthly plan payments made by Debtor under this Plan until terminated by:

1. Debtor filing and serving a modified plan and motion to confirm which provides for other treatment of [Creditor Name] secured claim,

2. the court enters an order modifying the automatic stay as provided in this Section 7.02, or

3. other further order of the court.

7.02.2 Adequate Protection Payment

The Debtor has in process a HAMP Application for modification of the loan upon which the [Creditor Name] secured claim. The application requests that the pre-petition arrearage, to the extent not waived, be included in a new principal amount to be amortized over the life of the loan as modified. During loan modification application process [Creditor Name] shall be paid $xxxxxxxx a month as an adequate protection payment for its secured claim, pending determination on the loan modification. The monthly adequate protection payment shall be applied first to the post-petition interest accruing on this claim and then principal, or as specified in an agreed to loan modification.

This Chapter 13 Plan **does not** modify the rights of [Creditor Name] for this secured claim, but provides adequate protection payments during the loan modification process.

7.02.3 Loan Modification

1. Upon completion of a loan modification agreement, if any, the Debtor shall provide a copy of the agreement to the Chapter 13 Trustee and file a motion for approval of the loan modification within fourteen (14) days of the agreement being signed by the Debtor and [Creditor Name]. The Debtor shall not commence making payments under the terms of the loan modification until it has been approved or the payments authorized by order of The court.

2. For a loan modification which does not provide for any pre-petition arrearage cure payments to be made during the life of the Plan, the claim shall be paid by the Debtor as a Class 4 Claim under this Plan pursuant to the terms of the loan modification, with no modification of this Plan required so long as the monthly plan payments to the Chapter 13 Trustee are reduced only by the monthly Class 4 payment in an amount not greater than the adequate protection payment.

3. For a loan modification which requires arrearage cure payments to be made during the term of this plan, the Claim shall be paid as a Class 1 claim with the current monthly payment and the arrearage cure being paid through the Plan. If the Class 1 payment can be made without altering the treatment provided for creditors holding general unsecured claims, no modification of the plan shall be required, with the court order approving the modification documenting the agreed treatment of the Class 1 claim.

7.02.4 Denial of Loan Modification

If [Creditor Name] determines that a loan modification is not approved, it shall communicate the denial of a modification in writing to the Debtors and counsel for the Debtors by USPS First Class Mail, postage prepaid. In the event of a denial, the Debtors shall have fourteen (14) days from the mailing of the denial of the modification to file a modified plan and motion to confirm the modified plan to provide for payment of the [Creditor Name].

7.02.5 Events of Default, Failure to Modify Plan Upon Rejection of Modification, Failure to Prosecution Loan Modification

The Debtor shall be in default under the terms of this Plan, and [Creditor Name] entitled to exercise its rights to conduct a nonjudicial foreclosure sale, as described in the modification of the automatic stay in this Paragraph 7.02, of the Property in the event of any of the following defaults.

1. Default in timely adequate protection payment.

2. Default in the payment terms in a court approved loan modification agreement (if not a Class 4 claim for which the Plan terminates the automatic stay).

3. Failure to file and serve a modified plan and motion to confirm modified plan within fourteen (14) days of the mailing of a denial of the proposed loan modification.

4. Post-Petition non-monetary default under the Deed of Trust, including, without limitation, the failure to timely pay post-petition property taxes or property insurance.

5. Failure to diligently prosecute the loan modification application. For purposes of these Additional Provisions, the failure to diligently prosecute the loan modification application shall be documented by [Creditor Name] that forms, documents, records, or other information relating to the requested loan modification were requested in writing from the Debtor, and not provided by the Debtor within 30 days of the written request having been mailed to or delivered personally, by facsimile, or email to the Debtor or designated representative of the Debtor.

7.02.6 Modification of the Automatic Stay.

If [Creditor Name] denies in writing Debtor's loan modification request and Debtor does not file a Modified Plan and Motion to Confirm Modified Plan within 14 days of the mailing of that denial, served on the Debtor [and Debtor's bankruptcy counsel], or other grounds for modification exist under the terms of these Additional Provisions for the [Creditor Name] secured claim, [Creditor Name] may serve and file an *ex parte* motion for relief from the automatic stay to allow it to conduct a non-judicial foreclosure sale of the property and lodge a proposed order with the court. The *ex parte* motion shall be limited to the grounds set forth in these Additional Provisions. Any opposition to the *ex parte* motion shall be in writing, filed with the court within 14 days of the mailing of the *ex parte* motion to the Debtor [and Debtor's counsel], and limited to disputing the grounds arising under these Additional Provisions. The Debtor shall set a hearing on its opposition to the *ex parte* motion for the first available regular Chapter 13 motion for relief from automatic stay calendar for this court that is more than 21 days after the date the *ex parte* motion was mailed to the Debtor.

The grounds specified herein for modification of the automatic stay and *ex parte* motion procedure are without prejudice to [Creditor Name] filing a motion for relief from the automatic stay on any other grounds and setting the motion for hearing pursuant to the Federal Rule of Bankruptcy Procedure and Local Bankruptcy Rule.

~~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. **22-20583-E-13 NSV-1** | **LEE NEWTON** **Nima Vokshori** | **MOTION TO IMPOSE AUTOMATIC STAY** **3-17-22 [11]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 17, 2022. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

The Motion to Impose 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 Impose the Automatic Stay is denied.

Lee Ann Newton ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) imposed in this case. This is Debtor's third bankruptcy petition pending in the past year with the prior two cases having been dismissed. Debtor's prior bankruptcy cases (Nos. 2020-20745 and 2021-22307) were dismissed on May 19, 2021, and January 5, 2022, respectively. *See* Order, Bankr. E.D. Cal. No. 20-20745-E-31, Dckt. 82, May 20, 2021; Order, Bankr. E.D. Cal. No. 21-22307-E-13, Dckt. 62, January 10, 2022. Therefore, pursuant to 11 U.S.C. § 362(c)(4)(A)(I), the provisions of the

automatic stay did not go into effect upon Debtor filing the instant case.

Here, Debtor states that the instant case was filed in good faith and explains that the previous cases were dismissed due to delinquency in plan payments.

CREDITOR'S OPPOSITION

Wilmington Savings Fund Society, FSB, as Trustee of Stanwich Mortgage Loan Trust ("Creditor") filed its opposition to Debtor's Motion to Impose Automatic Stay on March 28, 2022. Opposition, Dckt. 19. Creditor states Debtor does not have sufficient income to sustain a Chapter 13 plan *Id.* at ¶ 8. Creditor points to Debtor's low income and the fact that she is only paid for nine (9) months of the year due to the nature of her work. *Id.* at ¶ 9. Creditor also alleges that the Debtor's Chapter 13 Plan falls short of payment in full of Secured Claim of Creditor as it claims only $30,229.44 in pre-petition arrears when it is actually $35,734.54. *Id.* Creditor is also states it is unclear whether Debtor can fund a "feasible plan" even with her brother's contribution income. *Id.* Creditor notes that the present case is now Debtor's fifth bankruptcy case since June 15, 2018. *Id.*

Creditor references Debtor's Declaration and states that it is "sparse on details" as it does not demonstrate Debtor's ability to fund a Chapter 13 plan and it does not indicate Debtor has an understanding of other options to save her home or her equity. *Id.* at ¶ 10. Thus, Creditor opposes Debtor's present Motion unless Debtor provides evidence of her "ability to confirm a feasible Plan" and her "ability to maintain ongoing Plan payments as necessary." *Id.* at ¶ 12.

DEBTOR'S RESPONSE

On April 5, 2022, Debtor filed a response to Creditor's opposition stating they intend to amend their plan to reflect the approximately $5,000.00 more in arrears than is estimated on Debtor's schedules. Dckt. 22. Additionally, Debtor states they are committed to making the required plan payments and the prior filings should not be held against them

APPLICABLE LAW

When stay has not gone into effect pursuant to 11 U.S.C. § 362(c)(4), a party in interest may request within 30 days of filing that the stay take effect as to any or all creditors (subject to such conditions or limitations as the court may impose), after notice and a hearing, only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed. 11 U.S.C. § 362(c)(4)(B).

For purposes of subparagraph (B), a case is presumptively filed not in good faith as to all creditors if:

> (I) 2 or more previous cases under this title in which the individual was a debtor were pending within the 1-year period;
>
> (II) a previous case under this title in which the individual was a debtor was dismissed within the time period stated in this paragraph after the debtor failed to file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall

not be substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney), failed to provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or

(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under this title, or any other reason to conclude that the later case will not be concluded, if a case under chapter 7, with a discharge, and if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; . . .

11 U.S.C. § 362(c)(4)(D).

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.

DISCUSSION

Debtor's prior cases were dismissed after Debtor became delinquent in her plan payments. For her first case, Debtor explains that she works in a school district and received reduced income when the school shut down during the COVID-19 pandemic. Declaration in support, Dckt. 13 at ¶ 4. (No. 2020-20745).

In her second case, Debtor had additional income from her brother as well as a Chapter 13 Plan which provided for lower plan payments over the summer months when Debtor would not receive employment income. Decl. at ¶ 6. However, Debtor inadvertently fell behind in her plan payment because she does not get paid until the end of the month after plan payments come due. *Id.* at ¶ 7. Debtor states that she tried her best to catch up on her plan payments but was unable to completely catch up by the time of the hearing on the Chapter 13's motion to dismiss. *Id.* at ¶ 8-9. (No. 2021-22307).

DEBTOR'S PRIOR BANKRUPTCY CASES

In reviewing the court's file, the court notes that the two prior bankruptcy cases pending and dismissed in the past year are not Debtor's only recent bankruptcy cases. Since June 2018, Debtor has filed, and had dismissed, the following cases:

1. Case No. 18-23750 – Chapter 13
Represented by Other Counsel
Date Filed: June 15, 2018
Date Dismissed: May 31, 2019

Plan Payment Amount: $2,724.30
Total Amount Paid by Debtor: $9,989.56 (Trustee Final Report, 18-23750, Dckt. 59)

Average Payment For Months of Case: $9,989.56/12 months = $832.46

Reason for Dismissal: Delinquent in plan payments and failure to propose a new Amended Plan.

2. Case No. 2019-24419 – Chapter 13
Represented by Other Counsel
Date Filed: July 15, 2019
Date Dismissed: January 16, 2020

Plan Payment Amount: $2,185.00
Total Amount Paid by Debtor: $5,060.46, with an additional $941.54 refunded to Debtor. (Trustee Final Report, 19-24419, Dckt. 53)
Average Payment For Months of Case: $9,989.56/5 months = $1,012.11

Reason for Dismissal: Delinquent in plan payments

3. Case No. 2020-20745 – Chapter 13
Represented by Same Counsel as Current Case
Date Filed: February 10, 2020
Chapter: 13
Date Dismissed: May 20, 2021

Plan Payment Amount: $2,491.76
Total Amount Paid by Debtor: $27,755.07, with an additional $3,916.93 refunded to Debtor. (Trustee Final Report, 20-24419, Dckt. 85)
Average Payment For Months of Case: $27,755.07/14 months = $1,982.50

Reason for Dismissal: Delinquent in plan payments

4. Case No. 2021-22307 – Chapter 13
Represented by Same Counsel as in Current Case
Date Filed: June 22, 2021
Date Dismissed: January 10, 2022
Plan Payment Amount: $2,700.00
Total Amount Paid by Debtor: $8,600.00 (Trustee Final Report, 20-24419, Dckt. 65.)
Average Payment For Months of Case: $8,600.00/7 months = $1,228.57
Reason for Dismissal: Delinquent in plan payments and failure to propose a new

Amended Plan.

Creditor is correct in that the present case marking Debtor's fifth attempt at a Chapter 13 bankruptcy case is relevant. Debtor seems to have a pattern of filing new bankruptcy cases about 1-2 months after the dismissal of her prior case, as well as a pattern of delinquency in plan payments. Debtor's "pattern of filing and dismissal . . . combined with the [Debtor's] failure to disclose all required prior filings, strongly indicates [Debtor] does not intend to use the bankruptcy process the way it was intended. The [Debtor's] creditors have been wrongly hindered or delayed from enforcing their rights." *Landis v. Barttels* (*In re Barttels*), No. 10-01145-13, 2011 Bankr. LEXIS 5588, at *8 (Bankr. E.D. Cal. Jan. 28, 2011).

The Plan filed in this current case requires monthly plan payments by Debtor consisting of:

1. $2,300.00 per month for two months;
2. $ 100.00 per month for three months;
3. $2,300.00 per month for nine months;
4. $ 100.00 per month for three months;
5. $2,300.00 per month for nine months;
6. $ 100.00 per month for three months;
7. $2,300.00 per month for nine months;
8. $ 100.00 per month for three months;
9. $2,900.00 per month for nine months;
10. $ 100.00 per month for three months; and
11. $2,900.00 per month for three months.

Plan, ¶ 2.01 and § 7 Additional Provisions; Dckt. 17. The Plan term is stated to be 56 months. *Id*., ¶ 2.03.

Looking at the Claim filed in 18-23750, Proof of Claim 2-1 stating a pre-petition arrearage of ($18,678.08) and Proof of Claim 8-1 in case 21-22307 showing a pre-petition arrearage of ($30,229.44), Debtor's reorganization efforts resulted in the arrearage hole getting deeper. In opposing the present Motion, Creditor asserts that the pre-petition arrearage has increased to ($35,734.42), which would be an almost 100% increase since Debtor began filing Chapter 13 cases in 2018.

On Schedule I in this case Debtor states having monthly gross wages of $2,752.10. Dckt. 16 at 23. Debtor also lists having $1,400 in rental income and a $500 a month contribution from her daughter. *Id*. Debtor has not included the required statement of gross monthly income and expenses in computing net monthly rent income of $1,400. On the Statement of Financial Affairs Debtor states having gross rental income of $32,000 in 2021. *Id*. at 29. Dividing $32,000 by 12 months yields $2,666.66 a month in gross rental income. With Debtor reporting $1,400 in net monthly income, Debtor is spending $1,266.66 a month on rental expenses.

Debtor states having monthly expenses of ($1,742) on Schedule J. *Id*. at 26. This does not include any mortgage payments, property taxes, property insurance, or property maintenance. *Id*. at 25.

Debtor's proposed plan provides for making a monthly plan payment of ($1,302.19) for the current post-petition mortgage payment. Plan, ¶ 3.07; Dckt. 17. Though listing a ($30,229.44) pre-petition arrearage, with Creditor asserting it is ($35,734.42) in the Opposition, no amount to pay this

arrearage is provided for in the Plan. *Id*., ¶ 3.07(c).

No other claims are provided for in the Plan, and Debtor's counsel is to be paid $4,500.00 through the Plan, in addition to the Chapter 13 Trustee fees of 10%.

Computing the required Plan payments and the funding, the proposed Chapter 13 Plan appears to be significantly underfunded.

Months of the Plan		**Number of Months Paid**	**Total Paid for Period**
1-2	$2,300.00	2	$4,600.00
3-5	$100.00	3	$300.00
6-14	$2,300.00	9	$20,700.00
15-17	$100.00	3	$300.00
18-26	$2,300.00	9	$20,700.00
27-29	$100.00	3	$300.00
30-38	$2,300.00	9	$20,700.00
39-41	$100.00	3	$300.00
42-50	$2,900.00	9	$26,100.00
51-53	$100.00	3	$300.00
54-56	$2,900.00	3	$8,700.00
			=========
	Total Plan Payments		$103,000.00

Disbursements Required Under the Plan			
Chapter 13 Trustee Fees 10%			($10,300.00)
Debtor Attorneys' Fees			($4,500.00)
Current Mortgage Payments			($72,922.64)
	[$1,302.19 x 56 months]		
Pre-Petition Arrearage Cure			($35,734.42)
	[($35,734.42)]		
			==========
	Total Required Plan Payments		($123,457.06)

Over/(Under) Funding of Plan	**($20,457.06)**

In her Declaration, Debtor states that in the prior case the defaults and inability to cure arose because Debtor is paid at the end of the month. It is unclear as to why or how the timing of Debtor's income and the funding of a plan was a "surprise" in the prior fourth Chapter 13 case filed by Debtor.

While Debtor may be desperate to save the residence, which by Debtor's computation has $304,000 of equity, from the information provided, it appears that Debtor would be facing another plan funding failure.

Accordingly, Debtor has not sufficiently rebutted the presumption of bad faith under the facts of this case and the prior cases for the court to impose the automatic stay.

The Motion is denied.

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 Impose the Automatic Stay filed by Lee Ann Newton ("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.

19. 22-20195-E-13 DPC-1 — NICOLE DIAS, Mary Ellen Terranella — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK, 3-10-22 [13]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on March 15, 2022. 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. Community debts are not listed or included in Debtor's budget.

DISCUSSION

Trustee's objections are well-taken.

Infeasible Plan

Nicole Celeste Dias ("Debtor") proposes a 60-month Chapter 13 Plan that pays 47% of Debtor's unsecured liability. Objection, Dckt. 13 at 2:9-10. Debtor is married but filed the petition

individually. *Id.* at 2:8-9. However, at the Meeting of Creditors on March 3, 2022, Debtor testified that her Non-Filing Spouse makes payments on several items using community funds. *Id.* at 2. These include:

1. Several credit cards that are only in the Non-Filing Spouse's name. *Id.* at 2:14-16. Non-Filing Spouse pays for these credit cards using community funds that are not listed on Debtor's Schedule F or J. *Id.*

2. A 2013 Ford F250 Pickup and a 2018 Forest River Trailer, both of which the Non-Filing Spouse is the sole person on the loan and on the title. Both were acquired over the course of Debtor and Non-Filing Spouse's marriage and Non-Filing Spouse uses community funds to make the payments. *Id.* at 2:19-25.

Trustee notes that the secured debts are listed in Debtor's budget on Schedule J, but the unsecured debts are not. *Id.* at 2:25-26. At the Meeting of Creditors, Trustee requested that Debtor provide a list of the Non-Filing Spouse's debts with balances, monthly payments, and the approximate paid in full dates for all his credit cards and secured debts. *Id.* at 3:2-4. Trustee states Debtor only provided Trustee with three (3) credit card statements from November 2021, and Trustee still needs the information in connection with Non-Filing Spouse's debts to determine if all community debts and disposable income are being paid into the plan. *Id.* at 3:5-8. Trustee's Attorney reaffirms that Trustee has not received any of the requested information and that no amendments or supplements have been filed to disclose the omitted information. Declaration in support, Dckt. 15 at 3. Without the information regarding the Non-Filing Spouse's debts, it is unclear whether Debtor can comply with her proposed Chapter 13 Plan while also budgeting for the Non-Filing Spouse's debts.

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. **21-22819-E-13 DPC-3** | **NELSON MADSEN/ SHARON BURNS** **Peter Nisson** | **MOTION TO EXAMINE ATTORNEY FEES** **3-1-22 [53]**

DEBTOR DISMISSED: 01/10/2022
JOINT DEBTOR DISMISSED: 01/10/2022

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on March 1, 2022. By the court's calculation, 37 days' notice was provided. 28 days' notice is required.

The Trustee's Motion to Examine Attorney 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 is granted, and upon review of the legal services provided and fees paid by Debtor, the court orders Attorney to immediately repay Debtors $2,500.00.

David P. Cusick, the Chapter 13 Trustee ("Movant") requests that the court examine the attorney's fees charged and/or received by Debtor's attorney, Peter Nisson ("Attorney"). Dckt. 53. Pursuant to Debtor's Disclosure of Compensation, Dckt. 17, Debtor's Attorney had received $2,500.00 as of August 16, 2021.

Movant challenges fees in the amount of $2,500.00, Dckt. 17, for the following reasons:

1. **Attorney's Prosecution of the Case:**

a. Attorney has been suspended three times since 1999. Most recently, (June 24, 2021), there were 13-counts of disciplinary charges for performance issues and led to his 5-year suspension.

b. The disciplinary action was pending prior to the filing of the case, therefore the Trustee is uncertain how Attorney planned to prosecute the case when the State Bar was seeking nearly permanent disbarment.

2. **Failure to comply with Local Bankruptcy Rules:**

a. Pursuant to Local Rule 9004-1(c)(1)(B), Attorney appears to have submitted an electronic transmitted signature for Debtor's Declaration of Individual Schedules, Statement of Financial Affairs, and Form 122C. However, the Voluntary Petition appears to have original signatures. Trustee is uncertain if Attorney had the original signed documents in his possession prior to filing documents with the court and is requesting Attorney to produce originally signed, by Debtor's hand, documents to the court.

3. **Failure to Prosecute Case, violation of 1301(c)(1):**

a. Failed to appear at First Meeting of Creditors.

b. Failed to appear at hearing for Objections to Confirmation of Chapter 13 Plan by Trustee and Tri Counties Bank.

c. Failed to confirm all thirty (30) Chapter 13 Plans that he had filed since 2019, not related to this case.

d. Received numerous attorney's fees but yet to confirm any plan.

APPLICABLE LAW

Under 11 U.S.C. § 329(b), if an attorney's compensation exceeds reasonable value of any services, the court may order the return of such payment. The court may on its own initiative determine whether any payment made by the Debtor is excessive. *Shalaby v. Mansdorf (In re Nakhuda)*, 544 B.R. 886, 902 (B.A.P. 9th Cir. 2016). Reasonableness is a question of fact that is dependent on the totality of circumstances. 3 Collier on Bankruptcy P 329.04 (16th 2022). Compensation may be reduced if the court finds the work was done in poor quality. *Id*. (citing *Hale v. United States Tr.*, 509 F.3d 1139, 1148 (9th Cir. 2007)). The relief granted on a motion for examination will be either by order, money judgment, or a combination of both. 3 Collier on Bankruptcy P 329.04 (16th 2022).

DISCUSSION

Here, the attorney failed to appear at the First Meeting of Creditors and failed to appear at a hearing on the Objections to Confirmation. Upon the court's independent review, the case was ultimately dismissed because a failure to make plan payments and failed to file a confirmable plan. During Trustee's Motion to Dismiss, Attorney stated they filed an amended plan, and referred to it as "Exhibit B." Dckt. 46. However, no Exhibit B was attached and no subsequent plan was filed with the court.

The court's prior review of the Docket for this case disclosed that no amended plan, motion to confirm amended plan, notice of hearing on such motion, or evidence in support of such a motion were been filed since the court's October 21, 2021 sustaining of the Objections to Confirmation of Debtors' Plan. Civ. Minutes and Orders; Dckts. 34-37, 47. Additionally, Attorney did not appear at the Hearing on the Motion to Dismiss, which was held on January 5, 2022.

Trustee claims Debtor was current at the time the case was dismissed and dismissal appeared to be based on the Attorney's conduct in the case. Motion at 4:12-13.

The court finds Attorney failed to adequately prosecute the case. Attorney essentially failed to do anything after filing the first nonconfirmable plan except filing an opposition to Trustee's Motion to Dismiss, which was filed five days late as the Opposition was due December 22, 2021 and Attorney filed it December 27, 2021. See Notice of Hearing, Dckt. 43; Opposition, Dckt. 46.

Attorney's work of filing a petition, a nonconfirmable plan, and an opposition does not equate to the $2,500.00 in fees Attorney recovered. Rather, Attorney's performed work does not equate to recovery of any fees since he failed to make any good faith attempt to give Debtor's a chance in their bankruptcy case. $2,500.00 is excessive, in its entirety, for the legal services provided Debtor.

The court notes Debtors have filed a new Chapter 13 case, with new representation. See Case No. 22-20157.

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 Examine Attorney Fees paid to Debtor's Counsel filed by David P. Cusick, the Chapter 13 Trustee ("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 is granted, and Peter Nisson, attorney for Nelson Madsen and Sharon Burns, the two debtors in this case, shall immediately pay $2,500.00 to Nelson Madsen and Sharon Burns.
>
> This Order may be enforced as a judgment of this court (Fed. R. Civ. P. 54, Fed R. Bankr. P. 7054, 9014(c).

21.	**22-20157-E-13 DPC-1**	**NELSON MADSEN /SHARON BURNS**	**MOTION TO EXAMINE ATTORNEY FEES**
	21 thru 23	**Peter Macaluso**	**3-1-22 [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 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, and Office of the United States Trustee on March 1, 2022. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

The Trustee's Motion to Examine Attorney 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 is granted, and upon review of the legal services provided and fees paid by Debtor, the court orders Attorney to immediately repay Debtors $2,500.00.

David P. Cusick, the Chapter 13 Trustee ("Movant") requests that the court examine the attorney's fees charged and/or received by Debtor's prior attorney, Peter Nisson ("Prior Attorney"). Dckt. 20. Pursuant to Debtor's Disclosure of Compensation, Dckt. 1, Debtor's Prior Attorney had received $2,500.00 prior to the filing of this statement. Additionally, it appears the Prior Attorney may actually have been paid a combined total of $5,000.00 from Debtors ($2,500.00 for Chapter 13 case No. 21-22819 which was dismissed, and $2,500.00 for this pending case).

Movant challenges fees in the amount of $2,500.00, Dckt. 1, for the following reasons:

1. **Prior Attorney's Prosecution of the Case:**

   a. Prior Attorney has been suspended three times since 1999.

Most recently, (June 24, 2021), there were 13-counts of disciplinary charges for performance issues and led to his 5-year suspension.

b. The disciplinary action was pending prior to the filing of the case, therefore the Trustee is uncertain how Attorney planned to prosecute the case when the State Bar was seeking nearly permanent disbarment.

2. **Failure to comply with Local Bankruptcy Rules:**

a. Pursuant to Local Rule 9004-1(c)(1)(B), Prior Attorney appears to have submitted an electronic transmitted signature for Statement of Financial Affairs, Plan, and Rights and Responsibilities. However, the Voluntary Petition, Declaration About an Individual Debtor's Schedule, Form 122C, and Verification of Master Address List, appears to have original signatures. Trustee is uncertain if Prior Attorney had the original signed documents in his possession prior to filing documents with the court and is requesting Prior Attorney to produce originally signed, by Debtor's hand, documents to the court.

3. **Failure to Disclose Information/Duplicate Information:**

a. Voluntary Petition does not identify Debtor's previous Chapter 13 case.

b. Schedule B asset values are the same, including cash and bank accounts, as to what was listed in Debtor's prior Chapter 13 case.

c. Schedule I, Line 13, does not show a change in previous income, yet Line 13, states "EDD may be reduced or stopped in September..."

d. Statement of Financial does not identify income for 2022 in Question #4 and it also does not show any previous attorney fees paid to attorney (Part 7), and the signatures appear to be the same electronically stamped date and signature.

e. Form 122C, Question #8 shows unemployment compensation of $1,161.00 for Nelson Madsen (DN 1, p. 42); however, Part 3 shows $0.00 income for Debtors, (p. 44).

f. The Plan (DN 3) appears to be a duplicate Plan from Debtor's previous Chapter 13 case.

h. Rights and Responsibilities of Chapter 13 Debtor and Their Attorneys, DN 5, shows the same electronic stamped date and signature (p. 3) as their previous Chapter 13 case.

I. Trustee is concerned whether Prior Attorney disclosed to Debtors that when the Court granted Trustee's motion, and dismissed their previous case, that the Court was seriously looking into the Prior Attorney's previous conduct or whether he would even be able to represent them in this case considering his upcoming disbarment.

APPLICABLE LAW

Under 11 U.S.C. § 329(b), if an attorney's compensation exceeds reasonable value of any services, the court may order the return of such payment. The court may on its own initiative determine whether any payment made by the Debtor is excessive. *Shalaby v. Mansdorf (In re Nakhuda)*, 544 B.R. 886, 902 (B.A.P. 9th Cir. 2016). Reasonableness is a question of fact that is dependent on the totality of circumstances. 3 Collier on Bankruptcy P 329.04 (16th 2022). Compensation may be reduced if the court finds the work was done in poor quality. *Id*. (citing *Hale v. United States Tr.*, 509 F.3d 1139, 1148 (9th Cir. 2007)). The relief granted on a motion for examination will be either by order, money judgment, or a combination of both. 3 Collier on Bankruptcy P 329.04 (16th 2022).

DISCUSSION

Here, the Prior Attorney failed to file new documents regarding Debtor's new case. Prior Attorney took it upon himself to file the same documents used in Debtor's previous Chapter 13 case No. 21-22819. This is evidenced by Debtor's petition not stating if they had filed bankruptcy in the past.

The court's review of the Docket for this case disclosed that a Motion to Substitute Attorney was filed on February 28, 2022. Dckt. 19.

The court finds Prior Attorney failed to prosecute the case. The court finds it unreasonable that merely filing a Debtor's petition warrants an additional $2,500.00 worth of work, especially when it is very evident that Prior Attorney used the exact same petition as the previous case that ultimately got dismissed. Rather, Prior Attorney's performed work does not equate to recovery of any fees since he failed to make any good faith attempt to give Debtor's a chance in their bankruptcy 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 to Examine Attorney Fees filed by David P. Cusick, the Chapter 13 Trustee ("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 is granted, and Peter Nisson, attorney for Nelson Madsen and Sharon Burns, the two debtors in this case, shall immediately pay $2,500.00 to Nelson Madsen and Sharon Burns.

This Order may be enforced as a judgment of this court (Fed. R. Civ. P. 54, Fed R. Bankr. P. 7054, 9014(c).

22.	**22-20157-E-13 DPC-2**	**NELSON MADSEN/ SHARON BURNS Peter Macaluso**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 3-9-22 [42]**

Final Ruling: No appearance at the April 12, 2022 Hearing is required.

Local Rule 9014-1(f)(2) Objection—No 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 15, 2022. 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. The court has determined that oral argument will not be of assistance in rendering a decision in this matter.

The Objection to Confirmation of Plan is sustained.

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

A. Debtor has failed to provide pay advices.

B. Debtor has failed to provide a tax transcript or a copy of their Federal Income Tax Return.

C. Debtor has failed to provide Chapter 13 documents.

REPLY OF DEBTORS

Debtor filed a reply on March 21, 2022. Dckt. 52. In the reply, Debtor represents that they have retained new counsel and will file a new Plan forthwith. Upon the court's review, a new plan has yet to be filed.

DISCUSSION

Trustee's objections are well-taken.

Failure to Provide Pay Stubs / 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 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).

Failure to Afford Plan Payment / Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The Debtor has filed documents with incomplete or inaccurate information. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable. The Trustee notes the following deficiencies in Debtor's Plan:

1. Section 3.05 of the Plan indicates that Debtor's attorney was paid $2,500.00; however, at the First Meeting of Creditors, the Debtor testified that they had paid Mr. Nisson $3,000 total fo the filing of their two bankruptcy cases.

2. Tri Counties Bank is listed in both Section 3.07 and 3.08 of the Plan.

3. Schedule D indicates that the Internal Revenue Service holds a secured claim in the amount of $126,594.64 encumbered by Debtor's real property located at 165 Blossom Hill Road, Space 309, San Jose, CA 95122. Failure to provide the treatment of such claim could indicate that the Debtor is unable to afford the payments under the Plan because they have additional debts or the Debtor intends to conceal the treatment of such creditor.

4. Schedule I fails to report Mrs. Madsen's employment income.

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.

23.	**22-20157-E-13 KL-2**	**NELSON MADSEN/ SHARON BURNS Peter Macaluso**	**OBJECTION TO CONFIRMATION OF PLAN BY TRI COUNTIES BANK 3-7-22 [26]**

Final Ruling: No appearance at the April 12, 2022 Hearing is required.

Local Rule 9014-1(f)(2) Objection—No 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 8, 2022. 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. The court has determined that oral argument will not be of assistance in rendering a decision in this matter.

The Objection to Confirmation of Plan is sustained.

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

A. The amount of the arrearage dividend is not sufficient to pay the amount of arrears in full over the term of the Plan.

DISCUSSION

Creditor's objection is well-taken.

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 $47,031.66 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.

Debtor has filed a Response to the Trustee's Objection to Confirmation stating that Debtor is not prosecuting this Plan, but is filing a 1st Amended Plan. Response, Dckt. 52.

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.

24. **21-24035-E-13** **VICTOR JUDD** **MOTION FOR REVIEW OF FEES**
DPC-1 **Peter Nisson** **3-1-22 [22]**

DEBTOR DISMISSED: 12/21/2021

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, and Office of the United States Trustee on March 1, 2022. By the court's calculation, 37 days' notice was provided. 28 days' notice is required.

The Trustee's Motion to Examine Attorney 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 is granted, and upon review of the legal services provided and fees paid by Debtor, the court orders Attorney to immediately repay Debtors $2,500.00.

David P. Cusick, the Chapter 13 Trustee ("Movant") requests that the court examine the attorney's fees charged and/or received by Debtor's attorney, Peter Nisson ("Attorney"). Dckt. 22. Pursuant to Debtor's Chapter 13 Plan, Attorney received $2,500.00 prior to the filing of this case.

Movant challenges fees for the following reasons:

1. **Attorney's Prosecution of the Case:**

   a. Attorney has been suspended three times since 1999. Most recently, (June 24, 2021), there were 13-counts of disciplinary charges for performance issues and led to his 5-year

suspension.

b. The disciplinary action was pending prior to the filing of the case, therefore the Trustee is uncertain how Attorney planned to prosecute the case when the State Bar was seeking nearly permanent disbarment.

2. **Failure to comply with Local Bankruptcy Rules:**

a. Pursuant to Local Rule 9004-1(c)(1)(B), Attorney appears to have submitted an electronic transmitted signature for Debtor's Rights and Responsibilities, Declaration of Individual Schedules, Statement of Financial Affairs, and Form 122C. Trustee is uncertain if Attorney had the original signed documents in his possession prior to filing the documents with the court and is requesting Attorney to produce originally signed, by Debtor's hand, documents to the court.

3. **Failure to timely file documents:**

a. On December 1, 2021, the court issued a Notice of Incomplete Filing or Filing of Outdated Form and Notice of Intent to Dismiss Case if Documents are not Timely Filed. Dckt. 5. This Notice contained a long list of documents that Attorney was required to timely file.

b. Attorney failed to file any of the enlisted documents on time. In fact, Attorney filed five (5) days past the deadline and only filed some of the documents enlisted in the Notice.

APPLICABLE LAW

Under 11 U.S.C. § 329(b), if an attorney's compensation exceeds reasonable value of any services, the court may order the return of such payment. The court may on its own initiative determine whether any payment made by the Debtor is excessive. *Shalaby v. Mansdorf (In re Nakhuda)*, 544 B.R. 886, 902 (B.A.P. 9th Cir. 2016). Reasonableness is a question of fact that is dependent on the totality of circumstances. 3 Collier on Bankruptcy P 329.04 (16th 2022). Compensation may be reduced if the court finds the work was done in poor quality. *Id*. (citing *Hale v. United States Tr.*, 509 F.3d 1139, 1148 (9th Cir. 2007)). The relief granted on a motion for examination will be either by order, money judgment, or a combination of both. 3 Collier on Bankruptcy P 329.04 (16th 2022).

DISCUSSION

Here, Attorney failed to comply with Local Bankruptcy Rules regarding electronic signatures on a number of Debtor's documents and failed to timely file documents with the court. Upon the court's independent review, the case was ultimately dismissed on December 21, 2021 for failure to timely file document(s). Order, Dckt. 15.

Despite being served with a court Notice of Incomplete Filing, Attorney failed to file a motion for an extension of time to file and untimely filed the following documents: Rights and Responsibilities of Chapter 13 Debtor and the Attorney, Schedules A - J, Summary of Assets/Liabilities, Statement of Financial Affairs, Disclosure of Attorney, and Form 122C. Motion, Dckt. 22 at 3-4. Not only were these documents filed five (5) days late, Attorney additionally failed to file the Statement of Social Security Number with the court. *Id.* at 4:4-5.

Furthermore, Attorney filed a Chapter 13 Plan (see Dckt. 14) but failed to file an appropriate Motion to confirm the plan. Debtor's bankruptcy case was soon dismissed for failure to timely file documents.

The court finds Attorney failed to prosecute the case. Attorney failed file documents on time with the court, or a motion for an extension of time to file so that they may be permitted to file late. The fact that Attorney never filed the Statement of Social Security Number with the court prevented Debtor from having a chance to litigate their bankruptcy case. The dismissal appears to be based on the Attorney's conduct alone in the case.

Attorney's work of filing a petition and several late documents does not equate to the $2,500.00 in fees Attorney received upfront. Rather, Attorney's performed work does not equate to recovery of any fees as he failed to make any good faith attempt to give Debtor a chance in their bankruptcy 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 to Examine Attorney Fees filed by David P. Cusick, the Chapter 13 Trustee ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Examine Attorney Fees is granted, and the Debtor's attorney, Peter Nisson, is directed to return funds in the amount of $2,500.00 to the Chapter 13 Trustee as property of the estate within ten (10) days of the entry of this Order.
>
> **IT IS ORDERED** that the Motion is granted, and Peter Nisson, attorney for Victor LaMont Judd, the debtor in this case, shall immediately pay $2,500.00 to Victor LaMont Judd.
>
> This Order may be enforced as a judgment of this court (Fed. R. Civ. P. 54, Fed R. Bankr. P. 7054, 9014(c)

25. **19-24875-E-13 SLE-5** **TIMOTHY/ROSA WEST** **Steele Lanphier** **CONTINUED MOTION FOR COMPENSATION FOR STEELE LANPHIER, DEBTORS ATTORNEY(S) 2-11-22 [89]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 11, 2022. By the court's calculation, 32 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is XXXXXXX.

Steele Lanphier, the Attorney ("Applicant") for Timothy A. West and Rosa Meria West, the Chapter 13 Debtor ("Client"), makes a Request for the Additional Allowance of Fees and Expenses in this case.

Fees are requested for the period June 16, 2020, through February 11, 2022. Applicant requests fees in the amount of $7,055.00 and costs in the amount of $118.00.

TRUSTEE'S OPPOSITION

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

Further, Trustee notes that anticipated services listed in Billing Analysis in the amount of

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

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

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

APPLICABLE LAW

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including–
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
>
> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
>
> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

> (I) unnecessary duplication of services; or
> (ii) services that were not—

(I) reasonably likely to benefit the debtor's estate;
(II) necessary to the administration of the case.

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

Reasonable Fees

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

A. Were the services authorized?

B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?

C. Are the services documented adequately?

D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?

E. Did the attorney exercise reasonable billing judgment?

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

Reasonable Billing Judgment

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

(a) Is the burden of the probable cost of legal services disproportionately large in relation to the size of the estate and maximum probable recovery?

(b) To what extent will the estate suffer if the services are not rendered?

(c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

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

A review of the application shows that Applicant's for the Estate include communicated with client and creditor's counsel, prepared and filed substantive motions, and appear at court hearings. The court finds the services were beneficial to Client and the Estate and were reasonable.

"No-Look" Fees

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

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

additional compensation. Form EDC 3-095, Application and Declaration RE: Additional Fees and Expenses in Chapter 13 Cases, may be used when seeking additional fees. The necessity for a hearing on the application shall be governed by Fed. R. Bankr. P. 2002(a)(6).

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed $4,000.00 in attorneys' fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 18. Applicant prepared the order confirming the Plan.

Lodestar Analysis

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

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

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Motion for Relief from Stay: Applicant spent 2.2 hours and Paralegal spent 3.0 hours in this category. Applicant communicated with client, prepared and filed an opposition, communicated with bank counsel on MFR, and appeared at the hearing.

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

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

Motion for Fees: Applicant spent 1.9 hours and Paralegal spent 3.8 hours in this category. Applicant prepared and filed the motion.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Steele Lanphier, Attorney	13.4	$350.00	$4,690.00
Paralegal	15.5	$150.00	$2,325.00
Total Fees for Period of Application			$7,015.00

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

Additionally, the total additional compensation sought in the motion is $7,173.00. This number is based upon attorney's fees, paralegal fees, and costs. The actual amount of fees would be the total compensation sought less than costs, bringing the total amount of fees to $7,055.00 ($7,173.00 - $118.00). However, upon review the actual total compensation sought is $7,133.00 ($4,690.00 + $2,325.00 + $118.00 = $7,133.00). Which means the total amount of fees is actually $7,015.00 ($7,133.00 - $118.00).

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

Costs and Expenses

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

April 12, 2022 Hearing

At the hearing XXXXXXX.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Steele Lanphier ("Applicant"), Attorney having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Allowance of Professional Fees is XXXXXXX.

26. 21-23930-E-13 SLE-2 — JEANIE REAM / Steele Lanphier — MOTION TO CONFIRM PLAN — 2-10-22 [47]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 10, 2022. By the court's calculation, 61 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

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

The debtor, Jeanie Ream ("Debtor") seeks confirmation of the Chapter 13 Plan. The Plan provides to be 60 months with the Plan being considered as of February 2022, payments shall thereafter

be 4525.00 per month until Plan completion, and unsecured claims getting a 0% dividend with claims totaling approximately $83,350.29. Plan, Dckt. 51. 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 24, 2022. Dckt. 64. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor and Debtor's Attorney have failed to appear at the two Meeting of Creditors held on February 10, 2022, and March 10, 2022. Debtor's Attorney contacted Trustee's office on February 9, 2022, informing them he had a conflict and need to appear in Woodland at 9:00 a.m. Trustee continued the hearing to 1:00 p.m. on March 10, 2022, Debtor's Attorney was notified of the continuance on February 10, 2022. On March 10, 2022, at 11:10 a.m., Debtor's Attorney informed the Trustee's office he was in Woodland for a trial and would not be appearing.

B. The Debtor is delinquent the first two Plan payments to the Trustee, in the amount of $1,050.00. The next scheduled payment of $525.00 is due on April 25, 2022.

C. The Plan provision states, "2.01 Plan shall be considered as of February 2022." The Trustee is uncertain what is to be "considered." If the proposal is that no plan payments will be due until February 25, 2022, the Trustee is not certain if this also modifies the plan length of 60 months to start from the same date, a one month difference.

D. The Debtor has failed to file "The Statement of Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys" identifying what fees have been charged and what fees were paid prior to filing this case.

E. Debtor filed FRBP 2016(b), which identifies Debtor's Attorney agreed to accept $4,000.00 for Chapter 13, and $1,495.00 was paid prior to filing the case, leaving a balance of $2,505.00. The Plan states Debtor's Attorney agreed to $4,000.00 and $0.00 was paid prior to filing. Section 3.06 also shows Debtor's Attorney will receive $4,000.00 each month as an administrative expense. The Trustee is uncertain what amount the attorney has received prior to filing the case and if there will be sufficient funds to pay the Debtor's Attorney $4,000.00 if the Plan is confirmed with the next nine months.

DISCUSSION

Failure to Appear at 341 Meeting

Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341.

Appearance is mandatory. *See* 11 U.S.C. § 343. Attempting to confirm a plan while failing to appear and be questioned by the Chapter 13 Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

The Continued Meeting of Creditors was held on February 10, 2022, and March 10, 2022, and the Chapter 13 Trustee's Report indicates Debtor did not appear. The Meeting of Creditors has been continued for a third time to April 14, 2022, at 1:00 p.m.

Delinquency

The Chapter 13 Trustee asserts that Debtor is $1,050.00 delinquent in plan payments, which represents multiple months of the $525.00 plan payment. According to the Chapter 13 Trustee, the Plan in § 2.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Failure to Afford Plan Payment / Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The Plan provision states, "2.01 Plan shall be considered as of February 2022." The Trustee is uncertain what is to be "considered." If the proposal is that no plan payments will be due until February 25, 2022, the Trustee is not certain if this also modifies the plan length of 60 months to start from the same date, a one month difference.

Debtor filed FRBP 2016(b), which identifies Debtor's Attorney agreed to accept $4,000.00 for Chapter 13, and $1,495.00 was paid prior to filing the case, leaving a balance of $2,505.00. The Plan states Debtor's Attorney agreed to $4,000.00 and $0.00 was paid prior to filing. Section 3.06 also shows Debtor's Attorney will receive $4,000.00 each month as an administrative expense. The Debtor has failed to file "The Statement of Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys" identifying what fees have been charged and what fees were paid prior to filing this case.

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

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

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

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

27. **17-26993-E-13** **JUSTIN MCCAULEY**
SLE-4 **Steele Lanphier**

CONTINUED MOTION FOR COMPENSATION BY THE LAW OFFICE OF LANPHIER & ASSOCIATES FOR STEELE LANPHIER, DEBTORS ATTORNEY(S)
2-4-22 [45]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 4, 2022. By the court's calculation, 39 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Steele Lanphier, the Attorney ("Applicant") for Justin Ryan McCauley, the Chapter 13 Debtor ("Client"), makes a Request for the Additional Allowance of Fees and Expenses in this case.

Fees are requested for the period December 3, 2021 through March 15, 2022. Applicant requests fees in the amount of $4,455.00 and costs in the amount of $60.00.

TRUSTEE'S OBJECTION

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

to Applicant's Motion for Compensation. *Id.* at ¶ 1.

Trustee asserts that the additional $525.00 fee for anticipated future work cannot be determined reasonable as such fees are for services that have not been completed and cannot be proven at this time. *Id.* Trustee further states that if the court "resolves [this] matter and takes it off of the calendar and no hearing is held, then [the $4,455.00 fee] should be adjusted to reflect that." *Id.* Trustee additionally clarifies that they *do not* oppose additional fees and costs in the amount of $3,990.00 ($3,930.00 in fees, $60.00 in costs) since that amount reflects the fees and costs associated with work that has already been done and properly billed according to the Exhibits. *Id.*

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

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

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

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

APPLICABLE LAW

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including–
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem,

issue, or task addressed;

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

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

Further, the court shall not allow compensation for,

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

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

Reasonable Fees

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

A. Were the services authorized?

B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?

C. Are the services documented adequately?

D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?

E. Did the attorney exercise reasonable billing judgment?

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

Reasonable Billing Judgment

Even if the court finds that the services billed by an attorney are "actual," meaning that the

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

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

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

A review of the application shows that Applicant's for the Estate include providing legal advice and rendering legal services to Client, as well as drafting various Motions in connection with Client's Chapter 13 bankruptcy case. The court finds the services were beneficial to Client and the Estate and were reasonable.

"No-Look" Fees

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

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

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

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

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

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed $4,000.00 in attorneys' fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 18. Applicant prepared the order confirming the Plan. It should be noted, however, that Client has filed a Motion to Confirm Modified Chapter 13 Plan on February 4, 2022. Dckt. 39. Client's Motion to Confirm is set to be heard in conjunction with Applicant's present Motion for Compensation. Applicant asserts that the granting of this Motion for Compensation for additional fees will not impact Client since Client will pay Applicant's additional fees through the Modified Plan. Dckt. 45 at 2:22-23. Applicant further states that they will only be paid additional fees through the Modified Plan to the extent that funds are available, and that any remaining fees not covered by the Modified Plan will not be collected directly from Client. *Id.* at 2:24-26.

Lodestar Analysis

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

In rare or exceptional instances, if the court determines that the lodestar figure is

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

FEES AND COSTS & EXPENSES REQUESTED

Fees

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories. The hours spent in each category reflects the total amount of time spent on Client's bankruptcy case between *both* Applicant and Applicant's paralegal.

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

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

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

Motion for Fees: Applicant spent 3.6 hours in this category. Applicant prepared, reviewed, and filed the Motion

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Steele Lanphier, Attorney	7.5 hours	$350.00	$2,625.00
Name(s) not given, Paralegal	12.2 hours	$150.00	$1,830.00
Total Fees for Period of Application			$4,455.00

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $60.00 pursuant to this application.

The costs requested in this Application are,

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

Because there is a question of funding and possible modification of the Plan, the court continues the hearing.

Order Confirming Debtor's Modified Chapter 13 Plan

The court granted Debtor's Motion to Confirm Modified Plan on March 15, 2022. Order, Dckt. 67. Since the Modified Plan will provide the funding for Applicant's Motion for Compensation, the court allow Applicant the $3,930.00 in fees for work Applicant has already done plus the additional up to $525.00 for fees Applicant may incur in connection with this present Motion for Compensation.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Steele Lanphier ("Applicant"), Attorney having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Allowance of Professional Fees is granted.

FINAL RULINGS

28.	**17-28015-E-13** **MET-2**	**MARK/RACHEL RAMOS** **Mary Ellen Terranella**	**MOTION FOR COMPENSATION FOR MARY ELLEN TERRANELLA, DEBTORS ATTORNEY(S)** **3-1-22 [56]**

Final Ruling: No appearance at the April 12, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on March 1, 2022. 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.

Mary Ellen Terranella, the Attorney ("Applicant") for Mark Anthony Ramos and Rachel Lorraine Ramos, the Chapter 13 Debtor ("Client"), makes a Request for the Additional Allowance of Fees and Expenses in this case.

Fees are requested for the period July 23, 2018, through September 16, 2021. Applicant requests fees in the amount of $2,500.00 and costs in the amount of $25.90.

The court finds it nearly essential for attorneys to provide contemporaneous billing records.

Absent these records, the court has no ability to confirm whether the limited task billing provided is true and correct. Here, Applicant did not provide billing records. However, they did provide detailed description of tasks performed and time spent. The court prefers raw time and billing records to be submitted as an exhibit, however, given the success of the Applicant and limited hours, the court finds the exhibits not essential for this particular Motion.

Trustee's Nonopposition

On March 10, 2022, Trustee filed a nonopposition stating Debtor's attorney obtained "extraordinary success" for the Debtor. Dckt. 60.

APPLICABLE LAW

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including–
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
>
> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
>
> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

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

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

Reasonable Fees

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

A. Were the services authorized?

B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?

C. Are the services documented adequately?

D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?

E. Did the attorney exercise reasonable billing judgment?

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

Reasonable Billing Judgment

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

(a) Is the burden of the probable cost of legal services disproportionately large in relation to the size of the estate and maximum probable recovery?

(b) To what extent will the estate suffer if the services are not rendered?

(c) To what extent may the estate benefit if the services are rendered and what is

the likelihood of the disputed issues being resolved successfully?

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

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

"No-Look" Fees

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

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

Additional Fees and Expenses in Chapter 13 Cases, may be used when seeking additional fees. The necessity for a hearing on the application shall be governed by Fed. R. Bankr. P. 2002(a)(6).

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed $4,000.00 in attorneys' fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 33. Applicant prepared the order confirming the Plan.

Lodestar Analysis

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

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

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Motion to Approve Modified Plan: Applicant spent 10.50 hours in this category. Applicant reviewed emails from Client regarding their tax liability, discussed proposed modified plan with Client, prepared the modified plan and the Motion, and made several other communications in connection with pending Motion.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Mary Ellen Terranella	10.50	$350.00	$3,675.00
Total Fees for Period of Application			$3,675.00

While Applicant's total computed fees total $3,675.00, Applicant seeks approval of that total discounted to $2,500.00. Dckt. 56 at 4.

The court notes that Applicant has not provided contemporaneous billing records in support of this Application. Generally, for the court to made the necessary loadstar analysis and allowance, such contemporaneous records.

Applicant clearly has such records, having testified as to the hours expended, and then reducing down the amount to be paid by her client. Fortunately, which generally a loadstar analysis is required, as the Hon. David E. Russell noted a number of decades ago, that is not the exclusive method. Here, the legal services relate to a discrete legal proceeding - confirmation of a modified plan. From the court's review of the file, pleadings, and confirmation of the Plan, it is clear that 10.5 hours is a reasonable amount of time expended. For this Application (and Applicant should not presume for other applications), the court has been provided with a clear evidentiary basis for granting the relief requested.

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $25.90 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Copying	$0.70	$25.90
Total Costs Requested in Application		$25.90

FEES AND COSTS & EXPENSES ALLOWED

Fees

The unique facts surrounding the case, including such as Client changing jobs and inadvertency filling out their new W4 incorrectly which resulted in tax liability for tax year 2020, raise substantial and unanticipated work for the benefit of the Estate, Debtor, and parties in interest. The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the

services provided. The request for additional fees in the amount of $2,500.00 is approved pursuant to 11 U.S.C. § 330 and authorized to be paid by David Cusick ("the Chapter 13 Trustee") from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

Costs & Expenses

Costs in the amount of $25.90 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

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

Fees	$2,500.00
Costs and Expenses	$25.90

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Mary Ellen Terranella ("Applicant"), Attorney having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Mary Ellen Terranella is allowed the following fees and expenses as a professional of the Estate:
>
> Mary Ellen Terranella, Professional Employed by Mark Anthony Ramos and Rachel Lorraine Ramos ("Debtor")
>
> Fees in the amount of $2,500.00
> Expenses in the amount of $25.90,
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for Debtor.
>
> **IT IS FURTHER ORDERED** that David Cusick ("the Chapter 13 Trustee") is authorized to pay the fees allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

29. **20-20715-E-13 AF-5** **FOUAD MIZYED** **Arasto Farsad** **CONTINUED MOTION TO MODIFY PLAN** **2-3-22 [82]**

Final Ruling: No appearance at the April 12, 2022 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee , creditors, parties requesting special notice, and Office of the United States Trustee on February 3, 2022. By the court's calculation, 47 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

The debtor, Fouad Afif Mizyed ("Debtor") seeks confirmation of the Modified Plan because due to a misunderstanding, Debtor failed to increase their play payments as listed in their step-up plan. Declaration, Dckt. 84. The Modified Plan provides Debtor will make their February 2022 payment in the amount of $3,583.52. Debtor will then resolve a $8,428.92 post-petition delinquency by increasing their monthly plan payment to $4,115.00 beginning March 2022. Modified Plan, Dckt. 85. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on March 8, 2022. Dckt. 90. Trustee opposes confirmation of the Plan on the basis that:

A. The Trustee is not certain if the Debtor can afford the payments, or can reasonably afford to pay more, where the last Schedules I and J were filed with the Court on March 18, 2020. Dckt. 34. The Debtor filed this motion in response to the Trustee's Motion to Dismiss for Delinquency and is now proposing to increase plan payments. Without a supplemental Schedule I and J, the Trustee cannot ascertain the Debtor's current

budget and whether or not the modified plan is feasible. The Debtor has failed to carry the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

DISCUSSION

Failure to Afford Plan Payment / Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor had not filed an updated Schedules I and J since March 18, 2020. Dckt. 34. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

On March 17, 2022, after the Trustee filed an Opposition stating there was inadequate financial information provided in this case (the financial information being more than two years stale), Debtor filed new Schedules I and J. Dckt. 93. Under penalty of perjury Debtor states that one is an Amended/Supplemental Schedules I and the other is an Amended/Supplemental Schedule J, and the financial information therein dates back to the February 7, 2020 filing of this case, or may be truthful and accurate information from only some, unstated, post-petition date.

The new Schedule I and new Schedule J stated to each be both Amended and Supplemental cannot be both, and attempting to state they are indicates a "game" being played and a way for Debtor to provide inaccurate information with "plausible deniability." [Fn.1.]

FN. 1. Definitions of plausible deniability include:

> Plausible deniability is the ability to deny any involvement in illegal or unethical activities, because there is no clear evidence to prove involvement. The lack of evidence makes the denial credible, or plausible. The use of the tactic implies forethought, such as intentionally setting up the conditions to plausibly avoid responsibility for one's future actions.

https://politicaldictionary.com/words/plausible-deniability/

> A condition in which a subject can safely and believeably deny knowledge of any particular truth that may exist because the subject is deliberately made unaware of said truth so as to benefit or shield the subject from any responsibility associated through the knowledge of such truth.

https://www.urbandictionary.com/define.php?term=plausible%20deniability

> Plausible deniability is a term coined by the CIA during the Kennedy administration to describe the withholding of information from senior officials in order to protect them from repercussions in the event that illegal or unpopular activities by the CIA became public knowledge.

https://military-history.fandom.com/wiki/Plausible_deniability

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The Chapter 13 Trustee filed his Status Report stating that since the Amended/Supplemental (with no date that they are supplementally accurate from) Schedule I and Amended Schedule J (dating all the way back to the 2020 filing of this case) have been filed, the Trustee supports confirmation. It is unclear to the court how such Amended/Supplemental Schedules could provide accurate current information as to whether the Plan is feasible.

Comparing the 2020 Schedule I to the 2021 Amended/Supplemental Schedule I, Debtor's net income from his business dropped from $6,384.00 to $5,316 – which is $1,068 less income a month that may not have existed all the way back to when this case was filed.

On the incorrect original Schedule J Debtor stated under penalty of perjury that his expenses were ($3,809) a month. However, he has now filed the Amended Schedule J on March 17, 2022, stating that the accurate amount is only ($3,291) a month – indicating that Debtor may have had an extra $518 a month for the two years of this case.

While the Debtor may think that the incorrect use of legal terminology under penalty of perjury is "just technical stuff" which can be ignored, unfortunately such an assertion is incorrect. The court has addressed this "check every box" practice by other attorneys. Here, with Debtor stating a two year old "correct" documenting that his expenses were $518 lower than he previously said under penalty of perjury is very significant.

At the hearing, Debtor's counsel explained the error and requested additional time to file the Supplemental Schedules. The Trustee concurred with this request.

Supplemental Schedules

On March 23, 2022, Debtor filed Supplemental Schedules I and J. Dckt. 101. Debtor's monthly net income now reflects $4,374.49.

TRUSTEE'S STATUS REPORT

Chapter 13 Trustee states they no long oppose to confirmation of the plan as Supplemental Schedules have been filed. Dckt. 102. Trustee requests the court grant the Motion if current by the hearing. Dckt. 102.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Fouad Afif Mizyed ("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 3, 2022, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

30. 20-23443-E-13 BLG-6 | TONI PAINTER Chad Johnson | MOTION TO MODIFY PLAN 2-23-22 [59]

Final Ruling: No appearance at the April 12, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 23, 2022. By the court's calculation, 43 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Toni Hendricks Painter ("Debtor"), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on March 18, 2022. Dckt. 80. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Toni Hendricks Painter ("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 23, 2022, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

31. **16-26158-E-13 MET-2** | **HELEN GUNKEL** **Mary Ellen Terranella** | **MOTION FOR COMPENSATION FOR MARY ELLEN TERRANELLA, DEBTORS ATTORNEY(S)** **3-1-22 [80]**

Final Ruling: No appearance at the April 12, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney], Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 1, 2022. By the court's calculation, 43 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Mary Ellen Terranella, the Attorney ("Applicant") for Helen R. Gunkel, the Chapter 13 Debtor ("Client"), makes a Request for the Additional Allowance of Fees and Expenses in this case.

Fees are requested for the period May 23, 2018, through April 5, 2022. Applicant requests fees in the amount of $1,500.00 and costs in the amount of $0.00.

Trustee's Nonopposition

On March 22, 2022, Chapter 13 Trustee, David Cusick, filed a nonopposition stating the services were necessary and reasonable. Dckt. 89.

APPLICABLE LAW

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including–
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
>
> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
>
> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

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

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

Reasonable Fees

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

A. Were the services authorized?

B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?

C. Are the services documented adequately?

D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?

E. Did the attorney exercise reasonable billing judgment?

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

Reasonable Billing Judgment

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

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

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

A review of the application shows that Applicant's for the Estate include filing and opposition to the Trustee's Motion to Dismiss Case, filing a Modified Plan and Motion to Approve Modified Plan, and responding to Opposition to Motion to Modify Plan. The court finds the services were beneficial to Client and the Estate and were reasonable.

"No-Look" Fees

In this District, the Local Rules provide consumer counsel in Chapter 13 cases with an election for the allowance of fees in connection with the services required in obtaining confirmation of a

plan and the services related thereto through the debtor obtaining a discharge. Local Bankruptcy Rule 2016-1 provides, in pertinent part,

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

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed $2,100.00 in attorneys' fees, at the time of confirmation. Dckt. 78. Applicant prepared the order confirming the Plan.

Lodestar Analysis

If Applicant believes that there has been substantial and unanticipated legal services that have been provided, then such additional fees may be requested as provided in Local Bankruptcy Rule 2016-1(c)(3). The attorney may file a fee application, and the court will consider the fees to be awarded pursuant to 11 U.S.C. §§ 329, 330, and 331. For bankruptcy cases in the Ninth Circuit, "the primary

method" to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves "multiplying the number of hours reasonably expended by a reasonable hourly rate." *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). "This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer's services." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). A compensation award based on the lodestar is a presumptively reasonable fee. *In re Manoa Fin. Co.*, 853 F.2d 687, 691 (9th Cir. 1988).

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

Applicant's declaration indicates that additional work was required to address the issues raised in the Trustee's Motion to Dismiss Case. Due to Debtor's age and financial constraints, Counsel has reduced the amount requested from $2,590.00 to $1,500.00.

TRUSTEE'S NON-OPPOSITION

On March 22, 2022, the Trustee filed a Non-Opposition to Motion for Approval of Additional Attorney Fees. Dckt. 89. In the Non-Opposition the Trustee represents that they do not oppose the fees requested and that such fees were needed and 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.

Motion to Dismiss: Applicant spent 7.40 hours in this category. Applicant reviewed the relevant pleadings and prepared an opposition to the Trustee's Motion to Dismiss the case. Applicant also prepared a Motion to Modify Plan, reviewed the Trustee's opposition to same, and prepared and filed a proposed order Modifying the Plan.

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Mary Ellen Terranella	7.40	$350.00	$2,590.00
Total Fees for Period of Application			$2,590.00 discounted to $1,500.00

Costs and Expenses

Applicant does not seek the allowance and recovery of costs and expenses.

FEES AND COSTS & EXPENSES ALLOWED

Fees

The unique facts surrounding the case, including reviewing the Trustee's Motion to Dismiss and preparing an opposition to same., preparing a Motion to Modify Plan, reviewing the Trustee's opposition to same, and preparing and filing a proposed order Modifying the Plan, raise substantial and unanticipated work for the benefit of the Estate, Debtor, and parties in interest. The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. The request for additional fees in the amount of $1,500.00 is approved pursuant to 11 U.S.C. § 330 and authorized to be paid by David Cusick ("the Chapter 13 Trustee") from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

Costs & Expenses

Costs were not requested.

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

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

Fees	$1,500.00
Costs and Expenses	$0.00

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Mary Ellen Terranella ("Applicant"), Attorney having been presented to the court, and upon

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

IT IS ORDERED that Mary Ellen Terranella is allowed the following fees and expenses as a professional of the Estate:

Mary Ellen Terranella , Professional Employed by Helen R. Gunkel ("Debtor")

Fees in the amount of $1,500.00
Expenses in the amount of $0.00,

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

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

32. **18-25079-E-13 PGM-6** | **SHONTELL BEASLEY** **Peter Macaluso** | **MOTION TO APPROVE LOAN MODIFICATION** **3-4-22 [164]**

Final Ruling: No appearance at the April 12, 2022 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, and Office of the United States Trustee on March 8, 2022. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

The Motion to Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by Shontell E. Beasley ("Debtor") seeks court approval for Debtor to incur post-petition credit. Newrez, LLC, dba Shellpoint Mortgage Servicing ("Creditor"), whose claim the Plan provides for in Class 4, has agreed to a loan modification that will reduce Debtor's mortgage payment from the current $2,131.41 per month to $2,022.59 per month at a 3.000% interest rate. Additionally, the new principal balance will be $264,480.01, as reflected in Creditors updated Proof of Claim 9-2. Creditor's original claim was $315,755.86, Claim 9-1, and was paid $4,387.24 while Class 1 and is now Class 4. Trustee's Nonopposition, Dckt. 178.

Trustee's Nonopposition

Trustee filed a nonopposition on March 18, 202. Dckt. 178.

DISCUSSION

The Motion is supported by the Declaration of Shontell E. Beasley. Dckt. 167. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms.

This post-petition financing is consistent with the Chapter 13 Plan in this case and with Debtor's ability to fund that Plan. There being no objection from the Chapter 13 Trustee or other parties in interest, and the Motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve

the Loan Modification is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Loan Modification filed by Shontell E. Beasley ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the court authorizes Shontell E. Beasley to amend the terms of the loan with Newrez, LLC, dba Shellpoint Mortgage Servicing ("Creditor"), which is secured by the real property commonly known as 310 Donegal Drive, Vallejo, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion (Dckt. 166).

33. 21-21279-E-13 SUSAN STRAUB MOTION TO MODIFY PLAN
MET-1 Mary Ellen Terranella 2-3-22 [49]

Final Ruling: No appearance at the April 12, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 3, 2022. By the court's calculation, 68 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, Susan L. Straub ("Debtor"), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on March 9, 2022. Dckt. 61. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Susan L. Straub ("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 3, 2022, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

34. **21-23833-E-13 PGM-2** | **ELENA GONZALEZ** **Peter Macaluso** | **OBJECTION TO CLAIM OF FAY SERVICING LLC, CLAIM NUMBER 5 2-9-22 [46]**

DEBTOR DISMISSED: 3/10/2022

Final Ruling: No appearance at the April 12, 2022 hearing is required.

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

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

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

The Objection to Claim of Fay Servicing LLC, Claim Number 5 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.