

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Sacramento, California

April 21, 2015 at 3:00 p.m.

1. 15-20001-E-13 JOSE/ESMERALDA GIL MOTION TO CONFIRM PLAN
SDH-1 Scott Hughes 2-27-15 [[20](#)]

Final Ruling: No appearance at the April 21, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 27, 2015. By the court's calculation, 53 days' notice was provided. 42 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the Motion has been filed by the Chapter 13 Trustee or creditors. The amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on February 27, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

2.	<u>14-32313</u> -E-13	SALVADOR/ANGELINA LEON	MOTION TO CONFIRM PLAN
	TOG-4	Thomas Gillis	3-11-15 [<u>50</u>]

Final Ruling: No appearance at the April 21, 2015 hearing is required.

The Debtors having filed a Withdrawal of the Motion to Confirm, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041 **the Motion to Confirm was dismissed without prejudice, and the matter is removed from the calendar.**

3. [15-21040](#)-E-13 ANDREW LUMPKINS
DPC-1 Timothy Walsh

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
3-26-15 [[17](#)]

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the 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 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.

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)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 26, 2015. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

The Objection to the 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). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
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The court's decision is to sustain the Objection.

David P. Cusick, Chapter 13 Trustee, opposes confirmation of the Plan on the basis that:

1. The Trustee claims the Debtor has failed to provide the Trustee with the required business documents 7 days before the date of the meeting of creditors including: Questionnaire, tax returns, profit and loss statements, bank account statements, proof of license and insurance or written statement that no such documentation exists. This is required pursuant to 11 U.S.C. § 521(e)(2)(A) and Fed. R. Bankr. P. 4002(b)(3).

2. Trustee argues that the Debtor's plan fails the Chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). Furthermore, Trustee asserts that the Debtor failed to report \$300.00 cash on hand and business equipment with a value of \$5,034.00. Therefore, the Trustee believes he will not be able to determine if the plan will satisfy the liquidation analysis.

The Trustee's objections are well-taken. The court cannot determine the feasibility or viability of the plan when the Debtor has failed to provide all required financial information, required pursuant to 11 U.S.C. § 521(e)(2)(A) and Fed. R. Bankr. P. 4002(b)(3). Without this information, the court cannot confirm the plan.

As to the Trustee's second objection, the court concurs that based on the Debtor's failure to provide all necessary financial documentation as well as the Debtor's failure to report assets held by the Debtor that the Debtor may not pass the Chapter 7 liquidation analysis. The Debtor appears to not be fully disclosing assets of the estate which leads the court to question if the Debtor is hiding additional assets in an attempt to passing the liquidation analysis. Without full disclosure of the Debtor's assets, the court cannot determine if the Debtor satisfies the liquidation analysis.

Therefore, 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 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 the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

4. [14-28243](#)-E-13 ISIDRO GRAGEDA
TOG-4 Thomas Gillis

MOTION TO CONFIRM PLAN
3-9-15 [[50](#)]

Tentative Ruling: 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 9, 2015. By the court's calculation, 43 days' notice was provided. 42 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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 court's decision is to grant the Motion to Confirm the Amended Plan.

Isidro Grageda ("Debtor") filed the instant Motion to Confirm the Amended Plan on March 9, 2015. Dckt. 50.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on April 7, 2015. Dckt. 56. The Trustee objects on the basis that he is unsure if there is insufficient interest to unsecured creditors. The Debtor's plan proposes to pay 100% to all claims including an interest dividend to general unsecured claims. The plan proposes to pay 0.5% per year on unsecured. The Trustee is uncertain whether the proposed interest dividend is sufficient and what is required by law.

DISCUSSION

11 U.S.C. § 1323 permits a debtor to amend a plan any time before

confirmation.

First, to address the Trustee's objection, the court finds that the Trustee does not sufficiently plead the grounds for the objection. The Trustee merely states that he is "unsure" if the Debtor's proposed plan provides sufficient interest to the general unsecured creditors. The Trustee does not cite a Bankruptcy Code section but instead merely provides a brief case analysis from an Oregon bankruptcy case.

11 U.S.C. § 1325(b)(1) states:

(b)(1) 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--

(A) 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

(B) the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

The Debtor filed a supplemental Schedule I and J on March 9, 2015. Dckt. 54. The supplemental schedules show that Debtor's net monthly income is \$390.00. Under the terms of the proposed plan, the monthly plan payments would be \$390.00.

The Debtor, in his declaration, explains that he has discontinued his voluntary deductions and has reduced certain expenses, including clothing, personal care, and food, to ensure that the proposed plan is feasible. Dckt. 52. The Debtor also states that the supplemental Schedule J now includes the mortgage payment for the rental property which was omitted on the Debtor's prior Schedule J.

Upon review of the Debtor's supplemental schedules, the schedules facially appear to be reasonable. While the Debtor does not explain why the "parent" is not contributing to the household income and expenses nor why the Debtor seeks to retain the rental property which appears to be operating at a loss once some maintenance expenses are factored in, the Trustee has not objected to these alterations. The Debtor reports a net monthly income of \$390.00 which the proposed plan states is the monthly plan payments.

In light of the evidence presented and the Debtor's plan appearing feasible and viable, the amended Plan complies with 11 U.S.C. §§ 1322, 1323 and 1325(a) and is confirmed.

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

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

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on March 9, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

5. [12-40945](#)-E-13 MANSOUR/MARTHA GANJI
PGM-5 Peter Macaluso

MOTION FOR COMPENSATION FOR
PETER MACALUSO, DEBTORS'
ATTORNEY
3-18-15 [[107](#)]

Final Ruling: No appearance at the April 21, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 18, 2015. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Allowance of Professional Fees is granted.
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Peter G. Macaluso, the Attorney ("Applicant") for Mansour and Martha Ganji the Chapter 13 Debtor ("Client"), makes a first Interim Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period October 6,

2014 through March 3, 2015. Applicant requests fees in the amount of \$1,340.00.

David Cusick, the Chapter 13 Trustee, filed a non-opposition to the instant Motion on March 23, 2015.

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). 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.

Benefit to the Estate

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' Committee 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 as the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

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

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including Motion to Approve Trial Loan Modification and a Motion to Modify Plan following the Trustee filing a Motion to Dismiss.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Motion to Modify Plan: Applicant spent 3.40 hours in this category. Applicant received and reviewed Trustee's Motion to Dismiss, prepared modified plan, and communicated with Debtors concerning modified plan.

Motion to Approve Trial Loan Modification: Applicant spent 3.30 hours in this category. Applicant received and prepared materials for the Motion to Approve Trial Loan Modification.

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
Applicant Attorney	6.70	\$200.00	\$1,340.00

	0	\$0.00	<u>\$0.00</u>
Total Fees For Period of Application			\$1,340.00

Costs and Expenses

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

FEES AND COSTS & EXPENSES ALLOWED

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. 101. Applicant prepared the order confirming the Plan.

If Applicant believes that there has been substantial and unanticipated legal services which have been provided, then such additional fees may be requested as provided in Local Bankruptcy Rule 2016-1(c)(3). He 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. In the Ninth Circuit, the customary method for determining the reasonableness of a professional's fees is the "lodestar" calculation. *Morales v. City of San Rafael*, 96 F.3d 359, 363 (9th Cir. 1996), *amended*, 108 F.3d 981 (9th Cir. 1997). "The 'lodestar' is calculated by multiplying the number of hours the prevailing party reasonably expended on the litigation by a reasonable hourly rate." *Morales*, 96 F.3d at 363 (citation omitted). "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 County Bd. of Educ.*, 827 F.2d 617, 620 n.4 (9th Cir. 1987). Therefore, the court has considerable discretion in determining the reasonableness of 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.

The Applicant states that the work done in connection with the Motion to Approve Trial Loan Modification was unanticipated because the Debtor was able to secure a trial loan modification. The Applicant states that the Motion to Modify was unanticipated because it was in response to the Trustee's Motion to Dismiss.

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided which were substantial and unanticipated. First and Final Fees in the amount of \$1,340.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee under the confirmed plan from the available funds of the Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

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

Fees	\$1,340.00
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pursuant to this Application as final fees pursuant to 11 U.S.C. § 330 in this case.

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

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

The Motion for Allowance of Fees and Expenses filed by Peter G. Macaluso ("Applicant"), Attorney for Chapter 13 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 Peter G. Macaluso is allowed the following fees and expenses as a professional of the Estate:

Fees in the amount of \$ 1,340.00

The Fees and Costs pursuant to this Applicant, and Fees in the amount of \$1,340.00 are approved as final fees and costs pursuant to 11 U.S.C. § 330.

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

Final Ruling: No appearance at the April 21, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 6, 2015. By the court's calculation, 46 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

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

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

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on March 6, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed

order to the court.

7. [10-26951](#)-E-13 ALLEN PEREZ
DPC-1 Scott Hughes

MOTION TO RECONSIDER
2-17-15 [[104](#)]

Final Ruling: No appearance at the February 17, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on February 17, 2015. By the court's calculation, 63 days' notice was provided. 28 days' notice is required.

The Motion to Reconsider has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Reconsider is granted.

David Cusick, Chapter 13 Trustee, requests that the court reconsider its Order approving \$3,500.00 of attorney fees to Debtor's attorney, Piotr G. Reysner ("Counsel"). Dckt. No. 38. Counsel is no longer eligible to practice law, and is still showing to be the attorney of record in this bankruptcy case. As shown by a review of the California State Bar website and as addressed by the court in other cases, Counsel has wrestled with issues which impaired his ability to practice law and has stipulated to disbarment, which was effective June 16, 2012. Counsel status with the State Bar was Note Eligible to Practice Law effective from September 18, 2011 through the June 16, 2012 date. <http://members.calbar.ca.gov/fal/Member/Detail/210937>.

In this case, Debtors paid Counsel \$1,226.00 prior to the filing of the bankruptcy. On September 11, 2010, the court approved an order confirming Debtors' First Amended Chapter 13 Plan. Dckt. No. 38. The Plan was confirmed, and further ordered that:

[T]he attorney's fees for the debtor's attorney in the full amount of \$3,500.00 are approved, \$1,226.00 of which was paid

prior to the filing of the petition. The balance of \$2,274.00, provided that the attorney and debtor have executed and filed a Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys, shall be paid by the trustee from plan payments at the rate specified.

Order Confirming Debtors' First Amended Chapter 13 Plan Filed September 11, 2010. Dckt. No. 38. The fees of \$3,500.00 were awarded under Local Bankruptcy Rule 2016-1, which provides in pertinent part,

(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).

(4) If an attorney elects to be compensated pursuant to Subpart (c) but the case is dismissed prior to confirmation of a plan, absent a contrary order, the trustee shall pay to the attorney, to the extent funds are available, an administrative claim equal to fifty per cent (50%) of the total fee the debtor agreed to pay less any pre-petition retainer. The attorney shall not collect, receive, or demand additional fees from the debtor unless authorized by the Court.

(5) The Court may allow compensation different from the

compensation provided under this Subpart any time prior to entry of a final decree, if such compensation proves to have been improvident in light of developments not capable of being anticipated at the time the plan is confirmed or denied confirmation.

At the times relevant to this Motion the Local Bankruptcy Rule provided for a maximum of \$3,500.00 in fixed fees in non-business Chapter 13 cases. The amount was increased to \$4,000.00 in 2012.

The Fixed Fee compensation covers the activities of counsel through the debtor obtaining the discharge in the case. The Local Rules provide for additional fees for substantial and unanticipated additional services which may be required. Completing Chapter 13 Plan as confirmed, reviewing the Trustee's proposed final accounting and making sure that the debtor's discharge entered are included in the Fixed Fee.

In addition to Local Bankruptcy Rule 2016-1, 11 U.S.C. § 329 provides that the court may review all transactions between a debtor and counsel during the one-year period prior to the commencement of the case and during the case, and cancel any agreement for fees or order the return of fees that exceed the reasonable value of the services provided.

The Trustee has paid Counsel \$1,481.16 through the Chapter 13 Plan to date, which is in addition to \$1,226.00 retainer he received. Trustee has not disbursed the additional \$792.84, which otherwise remains to be paid to Counsel for services through the entry of the discharge in this case according to the order confirming. Thus, Trustee asks the court to reconsider paying Counsel the additional fees owed, as he is no longer practicing law and he cannot provide the legal services to Debtor.

DISCUSSION

Trustee asserts that the court should reconsider paying Counsel the balance of the Fixed Fee, as "he is no longer practicing law and has not proved that he has earned these remaining fees." Trustee's Motion to Reconsider, Dckt. No. 104 at 2. The Trustee's Motion is properly reviewed under 11 U.S.C. § 329 and Local Bankruptcy Rule 2016-1.

Standard for Attorney Compensation

Here, Counsel executed a Rights and Responsibilities on March 20, 2010, which stated that the initial fees charged in this case would be \$3,500.00 for all preconfirmation services, and acknowledged that of this amount, \$1,226.00 was paid by Debtor before the filing of the petition. Dckt. No. 7. Debtor and Counsel acknowledged that where substantial and unanticipated post-confirmation work would be necessary, the attorney may request the court to approve additional fees. Dckt. No. 7 at 5.

A bankruptcy court can, consistent with provision of Bankruptcy Code governing officer compensation, issue and rely upon presumptive guideline fees for routine services in Chapter 13 cases. 11 U.S.C. § 330. *In re Eliapo*, 468 F.3d 592 (9th Cir. 2006). The docket reflects that Counsel did not apply for additional compensation.

The Chapter 13 Plan was confirmed in this case on June 30, 2014. Order, Dckt. 99. The term of the Plan is 60 months. Amended Plan, Dckt. 99. The case having been filed on March 20, 2010, the Debtor is closing in on completing the Chapter 13 Plan.

The Fixed Fees includes the amounts for counsel to review the Trustee's Final Report, advise counsel that the monies have been properly accounted for, make sure the post-petition education and any other documents necessary for the discharge are filed, and to confirm that the Debtors' discharge is entered. Counsel cannot provide those legal services to the Debtors. The court finds that the remaining balance of \$792.84 relates to these additional services and that payment of such monies should not be to counsel.

The Motion is granted, the court does not allow the \$792.84 in fees to be paid to Counsel, and the Chapter 13 Trustee shall disburse such monies as otherwise provided in the Plan (including payment to other counsel who may substitute in to represent Debtor).

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

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

The Motion to Reconsider filed by the Trustee having been presented to the court, the Motion stating grounds for a review of counsel for Debtors' fees pursuant to 11 U.S.C. § 329 and Local Bankruptcy Rule 2016-1(c)(5), and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and attorneys' fees in the amount of \$792.84, which remain to be paid through the Chapter 13 Plan as confirmed, are disallowed Debtors' former counsel Piotr Reysner. The Chapter 13 Trustee shall disburse such monies as otherwise provided in the Plan, which may include counsel who may substitute in to represent Debtors in this case.

Final Ruling: No appearance at the April 21, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 17, 2105. By the court's calculation, 35 days' notice was provided.

35 days' notice is required.

The Motion to Confirm the 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

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

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

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on March 17, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

9. [14-30265](#)-E-13 FRANK/MARINA YAVROM
DPC-1 Timothy Walsh

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY DAVID
P. CUSICK
11-24-14 [[21](#)]

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the 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 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.

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)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 24, 2014. By the court's calculation, 50 days' notice was provided. 14 days' notice is required.

The Objection to the 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). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The court's decision is to sustain the Objection to Confirmation.
--

Trustee opposes confirmation of the Plan on the basis that the plan relies on pending motion. The Debtor cannot afford to make the payments or comply with the plan, 11 U.S.C. § 1325(a)(6). Debtors' plan relies on the Motion to Value Collateral of PNC Bank, N.A. which was set for hearing on January 13, 2015. FN.1. The Trustee asserted that if the Motion to Value is not granted, Debtors' plan does not have sufficient monies to pay the claim in full and therefore should also be denied confirmation.

FN.1. The Trustee stated in the Objection that it was a Motion to Value Collateral of National Bank. However, the only Motion to Value in this case is a Motion to Value the Collateral of PNC Bank, N.A. Dckt. 17. The court assumes that this is the Motion to Value the Trustee is referencing.

JANUARY 13, 2015 HEARING

At the hearing, the court continued the hearing to March 3, 2015 at 3:00 p.m. to allow the Debtor the opportunity to re-file a Motion to Value given that Home Expo Financial Inc. filed Proof of Claim No. 5 in connection with the lien. Dckt. 34.

MARCH 3, 2015 HEARING

At the hearing, the court continued the hearing to March 24, 2015 at 3:00 p.m. Dckt. 48.

TRUSTEE'S SUPPLEMENTAL PLEADINGS

The Trustee filed a supplemental pleading on March 16, 2015. Dckt. 51. The Trustee states the following:

1. The Debtor is over the median income and proposes plan payments of \$200.00 for 60 months, with 5% dividend to unsecured creditors, which totals \$9,258.00. The Trustee received a Notice of Mortgage Payment Change from JPMorgan Chase Bank, N.A. filed on March 13, 2015, the payment changed from \$622.57 to \$0.00. The Debtor lists this mortgage payment in Class 4 at \$644.00 and also on Schedule J as an expense.
2. The Trustee is uncertain of the state of the real property commonly known as 4812 White Jade St., Las Vegas, Nevada. It appears that the Debtor has listed many unsecured debts on Schedule F as "Mtg on foreclosed property: but has failed to list the address of the real property. The Debtor lists HOA on White Jade on Schedule F. The Trustee is not certain if the Debtor has additional funds to pay into the plan, if the mortgage payment of \$644.00 on White Jade Street is not being paid.

MARCH 24, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on April 21, 2015. Dckt. 57.

TRUSTEE'S STATUS REPORT

The Trustee filed a status report of April 14, 2015. Dckt. 63. After reviewing the history of the instant objection, the Trustee states that the Debtor has failed to address the Trustee's objections to date.

DISCUSSION

No supplemental pleadings have been filed by the Debtor nor has the Debtor filed a new or amended Motion to Value the secured claim.

The Trustee's objection is well-taken. The Debtor's plan is dependent on the valuation of the line of credit secured claim. However, as the court noted in its ruling on the Motion to Value, the court is unable to determine which creditor is the holder of the note. The court denied the Motion after having given the Debtor the opportunity to file an amended Motion to Value. Without the Motion to Value being granted, the plan is not feasible.

Furthermore, the unknown treatment of the real property and whether the Debtor now has more disposable income reinforces the fact the proposed plan is not the best efforts of the Debtor as there may be more funds that could be applied.

Therefore, because the Motion to Value has been denied, 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 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 the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

10. [14-30265](#)-E-13 FRANK/MARINA YAVROM
HDP-1 Timothy Walsh

CONTINUED AMENDED OBJECTION TO
CONFIRMATION OF PLAN BY HOME
EXPO FINANCIAL, INC.
1-23-15 [[39](#)]

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the 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 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.

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)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on January 22, 2015. By the court's calculation, 40 days' notice was provided. 14 days' notice is required.

The Objection to the 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). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The court's decision is to sustain the Objection to Confirmation.
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Home Expo Financial, Inc., successor in interest to PNC Bank ("Creditor") opposes confirmation of the Plan on the basis that:

1. The plan does not provide for full payment of the Creditor's claim;
2. The plan does not provide for the ongoing post-petition obligation of the Debtors as to the Creditor and the subject property.

3. Debtor's plan provides for avoidance of Creditor's lien. Creditor has objected to that motion.
4. Creditor objects to the plan as it fails to comply with 11 U.S.C. § 1322(b)(3) and 11 U.S.C. § 1322(a)(5) and cannot be confirmed.

MARCH 3, 2015 HEARING

At the hearing, the court continued the hearing to March 24, 2015 at 3:00 p.m. Dckt. 49.

No supplemental pleadings have been filed in connection with this Objection.

MARCH 24, 2015 HEARING

At the hearing, the court continued the hearing to April 21, 2015 at 3:00 p.m. Dckt. 58.

No supplemental pleadings have been filed in connection with this Objection.

DISCUSSION

The Creditor's objections are well-taken.

When a plan does not provide for a secured claim, the remedy is not necessarily denial of confirmation. Instead, the claim holder may seek the 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 reorganization 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 the respondent creditor's secured claim, raises doubts about the Plan's feasibility. See 11 U.S.C. § 1325(a)(6). This is reason to sustain the objection.

Furthermore, the plan is contingent on the Motion to Value being granted. At the March 3, 2015 hearing, the court denied the Motion. Because the Motion was denied, the plan is not feasible as drafted.

Therefore, 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 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 the Chapter 13 Plan filed by the Home

Expo Financial, Inc., successor in interest to PNC Bank having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

11. [14-30265](#)-E-13 FRANK/MARINA YAVROM
TJW-1 Timothy Walsh

CONTINUED MOTION TO VALUE
COLLATERAL OF PNC BANK, N.A.
11-20-14 [[17](#)]

Tentative Ruling: The Motion to Value secured claim has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on November 20, 2014. By the court's calculation, 54 days' notice was provided. 28 days' notice is required.

The Motion to Value secured claim has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

<p>The Motion to Value secured claim of PNC Bank, N.A. ("Creditor") is denied without prejudice.</p>

The Motion filed by Frank and Marina Yavrom ("Debtor") to value the secured claim of PNC Bank, N.A. ("Creditor") is accompanied by Debtor's

declaration. Debtor is the owner of the subject real property commonly known as 3005 Puffin Circle, Fairfield, California ("Property"). Debtor seeks to value the Property at a fair market value of \$300,000.00 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). AN.1.

The valuation of property which secures a claim is the first step, not the end result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

(a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) [emphasis added]. For the court to determine that creditor's secured claim (rights and interest in collateral), that creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2; case or controversy requirement for the parties seeking relief from a federal court.

OPPOSITION

Home Expo Financial Inc., asserting that it is a successor in interest to PNC Bank, N.A., ("Home Expo") has filed an opposition. Dckt. 26.

Home Expo argues that the lien is not wholly unsecured and is not proven junior. Home Expo argues that Debtors have no presented proof of the priority of the liens and demands strict proof thereof.

Home Expo also argues that, given the narrow range of value at issue, Debtors must prove the exact balance owed the senior lienholder, should Home Expo not be senior. Upon filing a proof of claim by the other lienholder, or upon an informal showing to Home Expo, Home Expo states that it will drop this portion of its opposition.

Home Expo states that Debtors have understated the balance due to the junior lienholder. Should Home Expo's lien be junior and thus possibly eligible for lien stripping, Home Expo disagrees that its lien is wholly unsecured.

While Home Expo argues a different valuation of the property based on its own "research," Home Expos has not provided any evidence of such.

JANUARY 13, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on March 3, 2015 to be heard in conjunction with the Objection to Confirmation. Dckt. 36. No supplemental pleadings in connection to the instant Motion has been filed.

MARCH 3, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on March 24, 2015. Dckt. 50.

No supplemental pleadings in connection to the instant Motion has been filed.

MARCH 24, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on April 21, 2015. Dckt. 59.

HOME EXPO'S SUPPLEMENTAL PLEADINGS

On March 30, 2015, Home Expo filed the Declaration of Theodore Krings, a licensed real estate appraiser, along with Mr. Krings appraisal report. Dckt. 60 and 61.

Mr. Krings states that he inspected the Property and investigated the recent sales of similar properties to determine the value of the Property. Mr. Krings states that his opinion of the Property values it at \$315,000.00 as of October 15, 2014, the effective date of the appraisal. Mr. Krings states that he used that date instead of the date of inspection because that was the date the case was filed.

DISCUSSION

First, to address the Home Expo's objection, the court does not find persuasive the burden shifting that Home Expo is attempting to argue. Home Expo does not provide any evidence that its lien may be senior to that of Chase to counter the evidence presented by Debtor. Instead, Home Expo merely argues that Debtor's evidence is sufficient for Home Expo. The Debtor provides in their declaration under penalty of perjury that Chase Bank holds the first mortgage. Dckt. 19. Home Expo merely argues that Debtors have to prove the senior priority of the Chase Bank mortgage and the exact amount. Home Expo has failed to support a factual finding to the contrary.

Furthermore, in reviewing Proof of Claim No. 5 filed by Home Expo, the court notes that is for an equity line credit obligation. In general real estate credit lending practice, such an equity line of credit is junior to the secured claim for financing, or refinancing, the real property. While Chase Bank has not yet filed a proof of claim, the Debtor's valuation of the Chase Bank's mortgage at approximately \$317,121.00 as reflected in Schedule D implies that Chase Bank holds a mortgage which would typically hold a senior position to a credit line.

Additionally, the evidence presented by Home Expo is the declaration of Henry Paloci III, its attorney in this bankruptcy case. Mr. Paloci states

under penalty of perjury that he has personal knowledge of what he testifies to in the Declaration. He testifies,

- A. He has reviewed files provided to him by Home Expo.
- B. He has been a bankruptcy practitioner for seventeen years.
- C. As the attorney advocate for Home Expo, he opines that the property securing the claim is worth more than \$317,221.00 which secures the senior lien.
- D. As the attorney advocate for Home Expo, he opines that the property has a value of \$329,000.00.
- E. He offers his opinion testimony to "rebut" the testimony of the Debtor.
- F. He has no knowledge (and does not testify of any attempts he has made on his client, the junior lien holder, to ascertain) the amount of the senior debt.

Declaration, Dckt. 27.

This declaration is problematic on several grounds. First, counsel and Home Expo have chosen to make their attorney a witness in this bankruptcy case as to material factual matters concerning the Home Expo claim in this case. This not only impugns his credibility as an advocate, it may open the door to a waiver of the attorney-client privilege on these matters. More significantly, the declaration demonstrates that Mr. Paloci cannot meet the minimum requirements for providing credible testimony - personal knowledge. F.R.E. 601. Finally, the court finds it difficult to believe that Home Expo does not have, and has not provided its attorney, with the amount of the senior lien for this debt they purchased.

Second, Debtor seeks to value the collateral of "PNC Bank, N.A." However, the court cannot determine from the evidence presented whose secured claim is to be valued pursuant to this Motion. Home Expo is claiming that they are the holder of the note and have filed a Proof of Claim No. 5 on January 2, 2014. The court will not issue orders on incorrect or partial parties that are ineffective. The court recognizes that Home Expo filed the Proof of Claim No. 5 after the Debtor submitted filed the instant Motion. The court cannot issue an order valuing the claim when based on the evidence before the court, the court cannot determine who is the actual holder. The court notes that Debtor may always use Federal Rule of Bankruptcy 2004 to aid in finding creditors and can refile a Motion to Value once they are certain to have named the proper creditor.

The Debtor has had multiple opportunities to properly file and amend the instant Motion to ensure that the proper creditor is listed. The court will no longer continue the Motion, especially in light of the fact that the Debtor has failed to file any supplemental pleadings, declarations, or motions to address the court and creditors concerns.

The supplemental pleading filed by Home Expo only addresses the appraisal value of the Property and does not discuss if Home Expo is the true creditor.

As stated supra, the court cannot issue an order valuing the claim of a creditor when the court cannot discern who is the real creditor.

Therefore, the Motion is denied without prejudice.

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

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

The Motion for Valuation of Collateral filed by Frank and Marina Yavrom ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

Tentative Ruling: 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 26, 2015. By the court's calculation, 54 days' notice was provided. 42 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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 court's decision is to deny the Motion to Confirm the Amended Plan.
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Danny Rue ("Debtor") filed the instant Motion to Confirm the amended Plan on February 26, 2015. Dckt. 100.

DEUTSCHE BANK NATIONAL TRUST COMPANY'S OBJECTION

Deutsche Bank National Trust Company, as Trustee for Morgan Stanley ABS Capital I Inc. Trust 2006-NC4, Mortgage Pass-Through Certificates, Series 2006-NC4 ("Creditor") filed an objection to the instant Motion on March 12, 2015. Dckt. 109. The Creditor objects on the following grounds:

1. Debtor's Chapter 13 Plan is not proposed in good faith. This is Debtor's seventh bankruptcy, the six prior having been dismissed or converted for failing to make plan payments. Debtor fails to indicate any positive change in financial circumstances to support the instant case. Additionally, the Debtor claims that the Creditor's loan is in modification when the Creditor states that no modification has been

granted. Further, the Creditor argues that the purpose of the instant bankruptcy is to prevent the Creditor from lawfully obtaining possession of its property.

2. The Debtor's proposed plan fails to provide for payment of the Creditor's pre-petition arrears on Creditor's secured claim under the assumption that the Debtor will be approved for a loan modification. The Creditor states that it has yet to receive a full modification application from the Debtor and the Plan does not provide for the situation if the loan modification is denied.
3. Debtor's Chapter 13 Plan does not cure Creditor's pre-petition arrears as required under 11 U.S.C. § 1322(b)(5).
4. Debtor's plan is not feasible because the proposed plan payments do not provide for the full payment of the Debtor's pre-petition arrears. Additionally, based on the Debtor's prior bankruptcies being dismissed for failure to make plan payments, the Creditor states the instant plan is not confirmable.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on April 7, 2015. Dckt. 125. The Trustee objects on the following grounds:

1. The Trustee has not received any evidence of a trial or permanent loan modification with America's Servicing Company. The Trustee also notes that the Creditor states that Debtor does not have a loan modification.
2. The Debtor has not provided evidence or proof that the Debtor has paid the mortgage payment directly to Lender America Servicing Co. in the amount of \$971.31 per month.
3. Creditor was granted relief from the automatic stay on March 3, 2015. Dckt. 108.

DISCUSSION

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

The Creditor's and Trustee's objections are well-taken. In essence, the objections for both parties comes down to the treatment of Creditor's claim and the Debtor's representation that the underlying loan is being modified. As indicated by the Creditor, no such modification is pending nor has one been granted.

The Creditor has filed a timely proof of claim in which it asserts \$75,361.35 in pre-petition arrearages. The Plan does not propose to cure these arrearages. Because the Plan does not provide for the surrender of the collateral for this claim, the Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. See 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B). Because it fails to provide for

the full payment of arrearages, the plan cannot be confirmed.

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

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

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

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

13.	14-30278-E-13	GARY SHREVES AND KAREN BAYSINGER- SHREVES Mark Wolff	MOTION TO CONFIRM PLAN 3-10-15 [46]
WW-5			

Final Ruling: No appearance at the April 21, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 10, 2015. By the court's calculation, 42 days' notice was provided. 42 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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 court's decision is to continue the Motion to Confirm the Amended Plan to 3:00 p.m. on May 5, 2015.
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Gary Shreves and Karen Baysinger-Shreves ("Debtors") filed the instant Motion to Confirm the Amended Plan on March 10, 2015. Dkct. 46.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on March 27, 2015. Dckt. 65. The Trustee objects on the following grounds:

1. Plan exceeds 60 months. The Plan will complete in 100 months as opposed to 60 months proposed. Debtor is proposing Plan payments of \$1,013.50 for 2 months, then \$460.00 for 58 months, totaling \$28,707.00. However, it will take longer than 60 months to pay the claims listed in the plan based on the proposed plan payments due in part to the Internal Revenue Service claim being substantially higher than the \$2,000.00 listed by Debtor in the proposed plan under Class 5.
2. The Plan proposes that Nationstar Mortgage, LLC be charged from a Class 1 creditor to Class 4 due to a pending loan modification. The additional Provisions of the Plan state "see December 8, 2014 correspondence from Nationstar Mortgage, LLC regarding proposed modification of loan." The Trustee is not aware of such a letter from Nationstar Mortgage, LLC.
3. Debtor's Plan in Class 1 states that "Trustee shall cease making payments effective January 18, 2015- 1 payment made is authorized." This amended Plan was not filed until March 10, 2015 and the Trustee has made 2 mortgage payments to Nationstar Mortgage, LLC (totaling \$2,280.84).
4. Debtor is \$459.40 delinquent in Plan payments to the Trustee to date and the next scheduled payment for \$460.00 is due on April 25, 2015.

DEBTORS' REPLY

The Debtors filed a reply to the Trustee's objection on April 14, 2015. Dckt. 77. The Debtors reply as follows:

1. The Debtors have filed all tax returns required to be filed. The Internal Revenue Service's original claim was based on estimated taxes owing. The Debtors state that they expect the Internal Revenue Service filing an amended claim prior to the scheduled hearing.
2. The Debtors have filed a Motion to Approve the Loan Modification with Nationstar Mortgage, LLC.
3. Debtors wish to authorize the payments make by the Trustee to Nationstar Mortgage, LLC in the order approving the plan.
4. The Debtors have sent the missing monthly payment to the Trustee on April 10, 2015. The Debtors state that they missed the payments due to Debtor Karen Baysinger-Shreves missing a few days of work due to illness.

DISCUSSION

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

In light of the Debtors' Motion to Approve the Loan Modification (Dckt. 79) set for hearing at 3:00 p.m. on May 5, 2015 and the anticipated amendment to the Internal Revenue Service's Proof of Claim, the court continues the hearing to 3:00 p.m. on May 5, 2015.

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

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

The Motion to Confirm the Chapter 13 Plan filed by the Debtor 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 Plan is continued to 3:00 p.m. on May 5, 2015 to be heard in conjunction with the Motion to Approve the Loan Modification (Dckt. 79).

14. [15-21082-E-13](#) STEVEN/MARIA PETERSON
DPC-1 Peter Cianchetta

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
3-24-15 [[16](#)]

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the 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 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.

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)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 24, 2015. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

The Objection to the 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). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
-----.

The court's decision is to sustain the Objection.

David P. Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that:

1. The Debtor's plan relies on a Motion to Value the secured claim of RPM Lenders. No such motions have yet to be filed and, therefore, the Debtor cannot make the payments under the plan or comply with the plan, 11 U.S.C. § 1325(a)(6).
2. The Debtor does not appear to be able to make plan payments because the Debtor proposes plan payments of \$235.00, however list disposable

monthly income, on Schedule J, as \$158.00.

3. Debtor's Plan fails the Chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). The Debtors list interest in lawsuits on Schedule B #21, listed with an unknown value. On Schedule C, Debtors exempt the assets under California Code of Civil Procedure § 703.140(b)(10)(D) and California Code of Civil Procedure § 703.140(b)(11)(D). Any non-exempt portion of a recovery realized during the life of the Plan should be turned over to the Trustee for the benefit of unsecured claims.

The Trustee's objections are well-taken.

A review of the Debtor's proposed plan shows that it does, in fact, rely on the court values the secured claim of RPM Lenders. A review of the docket reveals that no such motion has been filed by the Debtor. Without the court granting such a motion, the proposed plan is not feasible under 11 U.S.C. § 1325(a)(6).

As to the Trustee's second objection, the Debtor states on Schedule J to have a disposable monthly income of \$158.00 while proposing plan payments of \$235.00. The Debtor does not provide explanation on how the Debtor intends to make these payments when his disposable income is \$77.00 less than the proposed plan payments. Therefore, it does not appear that the Debtor is able to make the proposed plan payments.

Lastly, it appears that the Debtor, based on the pending lawsuits, may fail the liquidation analysis required under 11 U.S.C. § 1325(a)(4). The Debtor lists the value of these lawsuits as "unknown" while exempting them on Schedule C. Due to the uncertain nature of the potential value on the lawsuits, Debtor may not pass the liquidation analysis, especially in light of the fact that the Debtor may receive value in excess of the amount allotted in the exemptions claimed.

Therefore, 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 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 the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Tentative Ruling: The Motion to Extend Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the 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 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.

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)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on April 7, 2015. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Extend Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----.

The Motion to Extend Automatic Stay is granted.
--

Cristofer Alarcon ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtors' second bankruptcy petition pending in the past year. The Debtors' prior bankruptcy case (No. 15-21975) was dismissed on March 31, 2015, for failure to file the balance of the schedules with the court. See Order, Bankr. E.D. Cal. No. 15-21975, Dckt. 11, March 31, 2015. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

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). The

subsequently filed case is presumed to be filed in bad faith if the Debtor failed to perform under the terms of a confirmed plan. Id. at § 362(c)(3)(C)(i)(II)(cc). The presumption of bad faith may be rebutted by clear and convincing evidence. Id. at § 362(c)(3)(c).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); see also Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008). 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:

1. Why was the previous plan filed?
2. What has changed so that the present plan is likely to succeed?

Elliot-Cook, 357 B.R. at 814-815.

While the Debtor does not state the grounds for the relief sought in the Motion, as required by Local Bankr. R. 9014-1, the Debtor does provide explanation as to why the instant filing is in good faith in his Points and Authorities. While improper, the court waives this defect in light of the Debtor being *pro se* and in light of no objections being filed.

Here, Debtor states that the instant case was filed in good faith and provides an explanation for why the previous case was dismissed. The Debtor filed an emergency filing on March 13, 2015, but due to confusion and his wife's surgery, he was unable to locate and procure the documents necessary to file the remaining required documents. Debtor has substantial excuse for not following through with the filing of his initial paperwork. Debtor's wife had a hysterectomy the week before his previous case was filed. She is also the care-taker for her mother and Debtor had to assume care-taking duties for his wife and for his mother-in-law.

Additionally, he received the notice from the court regarding when his filing fee installment payments were due and confused that with the notice of when the documents were due for his incomplete filing and thus missed the date on which his paperwork was due. Debtor believes he has resolved his confusion and personal issues that led to his prior dismissal and does not anticipate further problems with providing the documents to the court.

The Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

The motion is granted and the automatic stay is extended for all purposes and parties, unless terminated by operation of law or further order of this court.

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

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

The Motion to Extend the Automatic Stay filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

16. [13-32995-E-13](#) JANET VIOLA
LBG-1 Luke Garcia

MOTION FOR COMPENSATION FOR
LUCAS GARCIA, DEBTOR'S ATTORNEY
3-17-15 [[46](#)]

Final Ruling: No appearance at the April 21, 2015 hearing is required.

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

Correct 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 17, 2015. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Upon review of the Motion and supporting pleadings, no opposition having been filed, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

<p>The Motion for Allowance of Professional Fees is denied without prejudice.</p>
--

Lucas Garcia, the Attorney ("Applicant") for Janet Viola the Chapter 13 Debtor ("Client"), makes a First Interim Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period July 3, 2013 through March 16, 2015. The order of the court approving employment of Applicant was entered on April 2, 2015, Dckt. 54. Applicant requests fees in the amount of \$3,413.00 and costs in the amount of \$417.61.

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). 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.

Benefit to the Estate

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' Committee 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 as the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign [sic] to run up a [professional fees and expenses] without considering the maximum

probable [as opposed to possible] recovery." *Id.* at 958. According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

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

Id. at 959.

OPPOSITION

Chapter 13 Trustee, David Cusick has filed an objection to the Applicant's Motion for Compensation for the following reasons:

1. No retainer agreement. The instant case had only one plan filed and confirmed, (Dckt. 5. And Dckt. 40.) The plan has a specific provision regarding attorney fees, which specifically identifies:

- The Law Office of Steven Johnson as "Attorney for Debtor"
- Attorney Fees shall be billed pursuant to "the Chapter 13 retainer Agreement"
- \$0.00 retainer pad pre-petition
- The retainer "shall be supplemented"
- If attorney fees are approved in excess of the retainer held, the "excess funds may be paid through the plan"

The Trustee objects to clarify the record. No retainer agreement appears to be filed with the court, no accounting for any retainer and supplemental to any retainer has been provided, and no statement as to any funds paid to the Law Office of Stephen Johnson has been provided.

2. May be duplicate Fees for Motion to Value. The Trustee is not certain why one Motion to Value was filed as to Bank of America, N.A., withdrawn and then refiled. On the time log filed in support (Dckt. 50) Debtor is billed \$160.00 for dates October 4, 2013; \$13, October 7, 2013; \$112.50 and \$34.50; for the prepare of, attorney review of and the filing of Motion to Value Collateral Bank of America. Debtor is billed \$23 on October 11, 2014 (which appears to be an error on the year of the date) for the withdrawal of the Motion to Value.

Debtor is then billed \$102.50 on October 10, 2013, \$45 for attorney review of Motion to Value, \$23 for case manager to make changes to Motion to Value on October 22, 2013 and then \$34.50 for

case manager to file and serve Motion to Value on October 23, 2013.

A review of PACER discloses that one Motion to Value Collateral (Dckt. 8) was filed on October 7, 2013 but was withdrawn on October 11, 2013 (Dckt. 19), with no explanation why it was withdrawn. If insufficient reasons exist, the attorney fees should be reduced by \$102.50, the total of the second Motion.

REVIEW OF MOTION

The one and one-half page Motion states with particularity (Fed. R. Bankr. P. 9013) the following grounds upon which the requested relief is based:

- A. Applicant has served as Debtor's attorney since July 3, 2013.
- B. Applicant received a retainer of \$0.00.
- C. A copy of the Rights and Responsibilities of Chapter 13 Debtor and Attorney statement was filed on October 4, 2013.
- D. To date, \$0.00 has been paid by the Chapter 13 Trustee on Applicant's fees.
- E. Applicant seeks "additional compensation" for 9.8 hours of attorney time (at \$225 an hour), 9.6 hours of "manager/paralegal" time (at \$115 an hour), and 2.0 hours for "legal staff" time (at \$65 an hour).
- F. Applicant also seeks expenses consisting of the following:
 - 1. Mailings.....\$ 29.41;
 - 2. Filing Fee.....\$281.00;
 - 3. Credit Check Fee.....\$ 40.00;
 - 4. CourtCall Fee.....\$ 41.20.
- G. The services provided "[i]nclude but are not limited to general correspondences, emails, telephone calls, file reviews, amendments, review, and review of proof of claims.

Motion, Dckt. 46.

The Motion continues, eschewing the document preparation requirements of Local Bankruptcy Rule 9004 and the Revised Guidelines for Preparation of Documents and bastardizes the motion into a declaration. In this District, the Local Bankruptcy Rules require that the motion be a separate pleading from each declaration, which are separate from the exhibit pleading.

On its face, the court has no ideal what legal services are asserted to have been provided and what these requested amounts are "in addition to." The statement of services would appear to describe no legal services having been provided.

A declaration of the Debtor is provided, which merely states, "I agree with the attorney fees/costs \$3,830.61 [sic]." Dckt. 48.

Applicant provides his declaration which provides minimal testimony. It merely states,

"1. Data Acquisition and Input:

a. Attorney Hours = 5.6 (\$225.00), b. Legal Assistant Hours = 6.2(\$115.00), c. Clerical Hours = 1.4 (\$65.00), d. Expenses = \$321.00, and e. Total \$2,385;

2. §341 Meeting of Creditors:

a. Attorney Hours = 2.5(\$225.00), b. Legal Assistant Hours = 1.1(\$115.00), c. Clerical Hours = .4 (\$65.00), d. Expenses = \$0.00, and e. Total \$715.00;

3. Motion to Value

a. Attorney Hours = 1.2(\$225.00), b. Legal Assistant Hours = 1.2(\$115.00), c. Clerical Hours = .2 (\$65.00), d. Expenses = \$61.30, and e. Total \$482.30;

4. Motion For Attorney's Fees:

a. Attorney Hours = .5 (\$225.00), b. Legal Assistant Hours = 1.1 (\$115.00), c. Clerical Hours = 0.00 (\$65.00), d. Expenses = \$9.31, and e. Total \$248.31

Signed on 17th day of March in Auburn, California under penalty of perjury."

Declaration, Dckt. 49. Applicant is unwilling, or unable, to provide any statements under penalty of perjury of the actual legal services provided, the outcome of such services, and the benefit to the bankruptcy estate and Debtor. FN.1.

FN.1.

The requirements for what constitutes an adequate declaration are set out in 28 U.S.C. § 1746, which provides:

"§ 1746. Unsworn declarations under penalty of perjury
Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true

under penalty of perjury, and dated, in substantially the following form:

(1) If executed without the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date).
(Signature)'.

(2) If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).
(Signature)'."

The purported declaration fails to comply with the minimal statement that the information in a declaration is true and correct. Rather, it merely states that this was "signed" under penalty perjury. Possibly the only matter being stated under penalty of perjury is that it was signed, with all of the information therein being false or unknown. Given that having a proper declaration statement is so simple, such a variance raises questions and concerns.

SUBSTITUTION OF ATTORNEY

On March 31, 2015, Applicant filed a Substitution of Attorney in which he was to be substituted in as counsel for Debtor in the place of Stephen Johnson. Dckt. 52. The court order authorizing the substitution was filed on April 2, 2015. Dckt. 54.

FILING AND PROSECUTION OF CASE

This bankruptcy case was filed on October 4, 2013. The petition is signed by Applicant as an attorney with the Law Offices of Stephen Johnson. Dckt. 1 at 3. The Disclosure of Compensation states that the Law Office of Stephen Johnson agreed to a \$4,000.00 fee for prosecuting this case. *Id.* at 33.

The Order confirming the Chapter 13 Plan in this case grants the Law Office of Stephen Johnson a fixed fee of \$4,000.00 pursuant to Local Bankruptcy Rule 2016-1(c). Dckt. 40. The order was prepared by Applicant.

Other than the instant fee applicant and substitution of counsel, no legal activity by Debtor has occurred in this case since the court entered the order confirming the Chapter 13 Plan.

ALLOWANCE OF "ADDITIONAL FEES"

Under the Local Bankruptcy Rules, Chapter 13 consumer counsel may elect to file traditional fee applications or accept a fixed "no-look" fee. L.B.R. 2016-1(a) and (c). When electing to take the "no-look" fee, then counsel may seek additional fees only under the following circumstances,

"(3) If the ["no-look"] 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 ["no-look"] 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)."

L.B.R. 2016-1(c)(3) (emphasis added). Applicant makes no attempt to explain to the court what "additional fees" should be allowed and why such "additional fees" are permitted. To the contrary, it appears that the "additional fees" are merely duplicate of the fees already allowed in this case.

DISCUSSION

Applicant has failed to provide the court with a motion and supporting evidence to warrant the granting of additional fees. A review of the time records clearly shows that all of the services are already provided for by the fee awarded in this case. (Though there might be a fight between applicant and prior counsel, that does not justify double paying of fees by the Debtor directly or by creditors through a plan.)

Further, in looking at the time records, little of the work appears to have been done by Applicant (based on the undefined initials for persons billing to the file on the time records). It also appears that Applicant is seeking to bill and recover professional fees for basic secretarial work, such as: (1) scheduling appointments, (2) scheduling appointment for appraiser, and (3) calendaring. The time records reflect little "legal work" done by the attorneys, and substantially all the work done by secretaries and "paralegals" (for whom the court has no statement of qualifications). The non-lawyers are identified as the persons drafting (and billing for) the limited number of pleadings filed in this case, with the attorneys just billing for "review." In light of the current motion and supporting pleadings, such review appears to be perfunctory at best.

The court denies the fee application without prejudice. It may well be that the \$4,000.00 "no-look" fee needs to be allocated in part to the predecessor counsel and the Applicant. The court wants to avoid any confusion that there has been a determination that Applicant is not entitled to any fees or a portion of the "no-look" fee approved in this case.

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

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

The Motion for Allowance of Fees and Expenses filed by Lucas Garcia ("Applicant"), Attorney for the Chapter 13 Debtor having been presented to the court, no task billing analysis having been provided in support of the Application, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Fees and Expenses is denied without prejudice.