

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

May 16, 2023 at 2:00 p.m.

1. <u>21-20225-E-13</u> <u>MOH-6</u>	DONALD JOHNSON Michael Hays	MOTION TO PAY 4-21-23 <u>[219]</u>
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on April 21, 2023. By the court's calculation, 25 days' notice was provided. 14 days' notice is required.

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

The Motion to Pay is granted.

The Chapter 13 Debtor, Donald B. Johnson, ("Movant") requests court authorization to pay Chapter 7 Trustee's fees and administrative costs as well as the balance on filed claims. The Debtor's former residence located at 35501 Brinville Road, Acton, California ("Property") has closed escrow for \$355,000.00, with a net to the Chapter 13 Trustee of \$314,652.90.

The court's prior orders, Dckts. 216, 113, 217, 218, provides the following Chapter 7 professionals to be paid in this case:

Nikki Farris, the former Chapter 7 Trustee:

Fees in the amount of \$11,396.00
Expenses in the amount of \$1,138.25,

Loris L. Bakken, Professional employed by the Chapter 7 Trustee:

Fees in the amount of \$16,870.00
Expenses in the amount of \$63.85,

Barry H. Spitzer, Professional employed by the Chapter 7 Trustee:

Fees in the amount of \$9,562.50
Expenses in the amount of \$24.72,

Christie Limpus-Hathaway, Professional employed by the Chapter 7 Trustee:

Fees in the amount of \$8,000.00,

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

These payment and fees total \$47,055.32. The court notes, Movant states the total is \$46,991.47. This figure omits Ms. Bakken's expenses. This omission appears to be in error.

After payment of the above fees and expenses, a balance remains of \$267,597.58. Movant requests the remaining proceeds from the sale of their Property to be used to pay the only two creditors in this proceeding: Creative Judgment Solutions ("CJS") in the amount of \$62,012.79 and Caraly Johnson in the amount of \$228,125.72, totaling \$290,138.51. The remaining proceeds from the sale of the Property are insufficient to pay the creditors in full.

For distribution, Movant requests CJS to be paid in full, the balance of funds to be paid to Ms. Johnson's attorney. The reason Movant does not request pro rata payment between the two creditors is because "CJS only consented to their judicial liens not being honored to allow the escrow to close on the condition that their claim would be paid in full by the Chapter 13 Trustee." Motion, Dckt. 219 at ¶ 3. It is not clear to the court where and when CJS consented to this.

CJS' most recent Proof of Claim, Proof of Claim 1-2, indicates a secured claim in the amount of \$62,012.79. Ms. Johnson's Proof of Claim, Proof of Claim 2-1, indicates an unsecured claim in the amount of \$228,125.72. Payment to CJS first, therefore, would be in line with the order of distribution in a Chapter 13 case.

At the hearing, **XXXXXXXXXX**

The Motion is granted, and the Chapter 13 Trustee is authorized to pay Chapter 7 Trustee's fees and administrative costs and the balance on filed claims.

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

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

The Motion to Pay filed by Chapter 13 Debtor, Donald B. Johnson, (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and the Chapter 13 Trustee is authorized to pay the following professional fees:

Nikki Farris, the former Chapter 7 Trustee:

Fees in the amount of \$11,396.00
Expenses in the amount of \$1,138.25,

Barry H. Spitzer, Professional employed by the Chapter 7 Trustee:

Fees in the amount of \$9,562.50
Expenses in the amount of \$24.72,

Christie Limpus-Hathaway, Professional employed by the Chapter 7 Trustee:

Fees in the amount of \$8,000.00,

Loris L. Bakken, Professional employed by the Chapter 7 Trustee

Fees in the amount of \$16,870.00
Expenses in the amount of \$63.85,

as well as the following claims:

Creative Judgment Solutions, secured claim of \$62,012.79,

Caraly Johnson, unsecured claim of \$228,125.72,

from the proceeds of the sale of 35501 Brinville Road, Acton, California (“Property”), in a manner consistent with the order of distribution in a Chapter 13 case.

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

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

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

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

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

<p>The Objection to Confirmation of Plan is sustained.</p>

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

- A. Jude Dictado ("Debtor") failed to provide evidence of their Social Security number.
- B. Debtor failed to file tax returns.

DISCUSSION

Trustee's objections are well-taken.

Failure to Provide Social Security Number

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

Failure to File Tax Returns

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

At the hearing, the Parties agreed to continue the hearing to allow Debtor to address the tax returns, the First Meeting of Creditors to be concluded, and Debtor address any amendments that need to be made to the proposed Plan.

Trustee's Status Report

Trustee filed a Status Report on May 9, 2023. Dckt. 33. Trustee states much of the above has been resolved, however, Debtor is \$69.60 delinquent in Plan payments and Trustee has not received copies of tax returns. Additionally, the Internal Revenue Services Amended Claim reflects priority in the amount of \$29,239.00, where the Plan only estimates \$1.00. This makes the Plan not feasible.

Trustee states Debtor's Counsel advised Trustee they intend to file an amended plan.

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

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

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

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on April 21, 2023. By the court's calculation, 25 days' notice was provided. 14 days' notice is required.

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

Eric Hutton and Stephanie Hutton ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 19-26200) was dismissed on April 10, 2023, after Debtor was delinquent in Plan payments. *See* Order, Bankr. E.D. Cal. No. 19-26200, Dckt. 43, April 5, 2023. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because Debtor retired from employment and their wife incurred debt outside of bankruptcy, both of which impacted Debtor's ability to make Plan payments.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). As this court has noted in other cases, Congress expressly provides in 11 U.S.C. § 362(c)(3)(A) that the automatic stay **terminates as to Debtor**, and nothing more. In 11 U.S.C.

§ 362(c)(4), Congress expressly provides that the automatic stay **never goes into effect in the bankruptcy case** when the conditions of that section are met. Congress clearly knows the difference between a debtor, the bankruptcy estate (for which there are separate express provisions under 11 U.S.C. § 362(a) to protect property of the bankruptcy estate) and the bankruptcy case. While terminated as to Debtor, the plain language of 11 U.S.C. § 362(c)(3) is limited to the automatic stay as to only Debtor. The subsequently filed case is presumed to be filed in bad faith if one or more of Debtor's cases was pending within the year preceding filing of the instant case. *Id.* § 362(c)(3)(C)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 362(c)(3)(C).

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

- A. Why was the previous plan filed?
- B. What has changed so that the present plan is likely to succeed?

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

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

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

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

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

The Motion to Extend the Automatic Stay filed by Eric Hutton and Stephanie Hutton (“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.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on March 29, 2023. By the court's calculation, 48 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is ~~denied~~.

The debtor, Suzanne Flemons ("Debtor") seeks confirmation of the Modified Plan to excuse a payment delinquency and increase Plan payments. Declaration, Dckt. 74. The Modified Plan provides \$159,273.04 to be paid through 48 payments followed by \$5,360.00 per month for twelve (12) months. Modified Plan, Dckt. 73. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on April 25, 2023. Dckt. 78. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor's Plan is not feasible.

DISCUSSION

Infeasible Plan

Trustee alleges that the Plan is not feasible. 11 U.S.C. § 1325(a)(6). First, Debtor mistates the amount of post-petition arrearages. The Trustee computes the post-petition arrearage to be \$8,491.59. Opposition, p. 2:6-14; Dckt. 78.

Second, Debtor is proposing to change their monthly dividend and interest rate beginning month 49, however, the hearing is not until month 50. Therefore, Trustee would not be able to comply with the proposed changes in month 49.

Third, Debtor proposes to increase the interest rate to unsecured claims based on an effective date of interest as of March 28, 2023. Debtor states that rate is 5.12%, however, it is actually 4.46%.

Thus, Debtor would not be able to comply with the Plan and it may not be confirmed.

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

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

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

~~_____ The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Suzanne Flemons (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~_____ **IT IS ORDERED** that Motion to Confirm the Modified Plan is denied, and the proposed Chapter 13 Plan is not confirmed.~~

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on April 13, 2023. By the court’s calculation, 33 days’ notice was provided. 14 days’ notice is required.

The Motion for Entry of Hardship Discharge was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----
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<p>The Motion for Entry of Hardship Discharge is granted.</p>
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Craig Uhrmacher and Jade Uhrmacher (“Debtor”) move for entry of a hardship discharge on the grounds that a health diagnosis of debtor Jade Uhrmacher has caused her to no longer able to work left Debtor unable to make further Plan payments. Debtor argues they are entitled to discharge because the Plan remains only \$2,000 shy of completion and the amount paid to unsecured claims is more than what they would have received in a chapter 7.

APPLICABLE LAW

Section 1328(b) of the Bankruptcy Code states:

Subject to subsection (d), at any time after the confirmation of the plan and after notice and a hearing, the court may grant a discharge to a debtor that has not completed payments under the plan only if—

(1) the debtor’s failure to complete such payments is due to circumstances for which the debtor should not justly be held accountable;

(2) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 of this title on such date; and

(3) modification of the plan under section 1329 of this title is not practicable.

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

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

- A. Whether the debtor has presented substantial evidence that he or she had the ability and intention to perform under the plan at the time of confirmation;
- B. Whether the debtor did materially perform under the plan from the date of confirmation until the date of the intervening event or events;
- C. Whether the intervening event or events were reasonably foreseeable at the time of confirmation of the Chapter 13 plan;
- D. Whether the intervening event or events are expected to continue in the reasonably foreseeable future;
- E. Whether the debtor had control, direct or indirect, of the intervening event or events; and
- F. Whether the intervening event or events constituted a sufficient and proximate cause for the failure to make the required payments.

Id.

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

Sub-section 11 U.S.C. § 1328(b)(1) “requires that the circumstances leading to the debtor’s failure to make payments be beyond the debtor’s control.” *In re Cummins*, 266 B.R. at 855. Such

aggravating circumstances need to be “truly the worst of the awfuls—something more than just the temporary loss of a job or a temporary physical disability.” *In re Nelson*, 135 B.R. at 307 (citation omitted).

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

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

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

DISCUSSION

Debtor has demonstrated to the court that the elements of 11 U.S.C. § 1328(b) have been met. While some courts have required that a debtor face a catastrophe, that is not a requirement. In this case, however, there has been a clear catastrophe in Debtor’s life that prevents Debtor from complying with and completing the Plan. The Motion is granted, and a hardship discharge under 11 U.S.C. § 1328(b) is entered for Debtor in this case.

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

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

The Motion for Hardship Discharge filed by Craig Uhrmacher and Jade Uhrmacher (“Debtor”) having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and the court shall enter a “hardship” discharge pursuant to 11 U.S.C. § 1328(b) for Craig Uhrmacher and Jade Uhrmacher in this case based on the Plan as performed as of the May 16, 2023 hearing date on this Motion.

Final Ruling: No appearance at the May 16, 2023 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on March 28, 2023. By the court’s calculation, 43 days’ notice was provided. 28 days’ notice is required.

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

<p>The Motion to Dismiss is denied without prejudice.</p>
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. the debtor, Craig Uhrmacher and Jade Uhrmacher (“Debtor”), is delinquent in Plan payments.

DEBTOR’S RESPONSE

Debtor filed a Response on April 21, 2023. Dckt. 46. Debtor states changes in circumstances has caused them to set for hearing a Motion for Hardship Discharge, to be heard on May 16, 2023.

DISCUSSION

Delinquent

Debtor is \$2,017.74 delinquent in plan payments, which, if paid, would complete the Plan. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The court continues this matter to be heard in conjunction with the Motion for Hardship Discharge, on May 16, 2023 at 2:00 p.m.

May 16, 2023 Hearing

The court having granted Debtor’s Motion for Entry of Hardship Discharge, this Motion is denied without prejudice.

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

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

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is denied without prejudice.

7. 19-21920-E-13 DPC-1	SUZANNE FLEMONS Diana Cavanaugh	CONTINUED MOTION TO DISMISS CASE 3-6-23 [64]
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on March 6, 2023. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

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

The Motion to Dismiss is XXXXXXXXXX

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

1. the debtor, Suzanne Flemons (“Debtor”), is delinquent in Plan payments.

DEBTOR’S OPPOSITION

Debtor filed an Opposition on March 22, 2023. Dckt. 68. Debtor states they will filed a modified plan prior to the hearing date.

DISCUSSION

Delinquent

Debtor is \$14,600.00 delinquent in plan payments, which represents multiple months of the \$3,773.54 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Plan and Motion to Confirm Filed

Debtor has filed on March 29, 2023, a Second Modified Plan (Dckt. 73) and Motion to Confirm (Dckt. 71) to address the defaults. From the court's preliminary review, it appears that the Motion states grounds with particularity upon which relief is based and that the Declaration in support (Dckt. 74) states personal knowledge testimony in support of the Motion to Confirm.

May 16, 2023 Hearing

At the hearing, **XXXXXXXXXXXX**

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

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

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is **XXXXXXXX**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on April 20, 2023. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is XXXXXXX .
--

Darren Wallace ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

- A. The Plan is not proposed in good faith as it fails to disclose assets.

NO DOCKET CONTROL NUMBER

Creditor is reminded that the Local Bankruptcy Rules require the use of a new Docket Control Number with each objection. LOCAL BANKR. R. 3015-1(c)(4), 9014-1(c). Here, Creditor failed to use a Docket Control Number. That is not correct. The court will consider the objection, but counsel is reminded that not complying with the Local Bankruptcy Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g).

FAILURE TO PROVIDE EVIDENCE

Creditor's counsel filed the Objection making several factual assertions. However, no declaration of the Creditor or other evidence was filed to support those assertions. Additionally, Debtor files two exhibits, which appear to be wiring instructions directed by Debtor and a check Debtor received from Creditor. However, these exhibits have not been authenticated through a declaration or otherwise shown to be self-authenticating by Creditor.

At a very basic level, every law student is taught that the court relies on properly authenticated, admissible evidence to establish facts in any proceeding—the court cannot and does not merely take counsel, nor exhibits, at their word. Apart from the practical effect that the court has been given a request for relief without any established factual basis, the Local Rules also affirmatively require that evidence be filed along with every motion and request for relief. LOCAL BANKR. R. 3015-1(c)(4), 9014-1(d)(3)(D). Failure to comply with the Local Rules is grounds for an appropriate sanction. LOCAL BANKR. R. 1001-1(g).

PLEADINGS FILED AS ONE DOCUMENT

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

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

DISCUSSION

Notwithstanding the above, Creditor has raised some serious issues before the court.

Undisclosed Assets

Creditor argues that the Plan is in violation of 11 U.S.C. § 1325(a)(3) because Debtor is concealing assets. Debtor fails to list distributions received from Creditor and a second creditor in the combined amounts of \$208,938.84. Debtor's Schedule A/B only lists assets in the total amount of \$15,819.00. Schedule A/B, Dckt. 11 at 7.

The Objection alleges, but does not provided evidence of, Debtor having received \$158,938.84 from an inheritance in April 2022, nine months before this Bankruptcy Case was filed.

Looking at Schedule A/B, Debtor states under penalty of perjury having personal property assets of \$15,819. Dckt. 11 at 3-8. Debtor owns no real property.

The information provided under penalty of perjury in the Statement of Financial Affairs includes the following that relates to assets of the Debtor:

Debtor made payments of \$3,084.00 a month on his wife's BMW, with a balance of (\$61,000) still owing on it. Statement of Financial Affairs, ¶ 6.

Debtor made no payments on any obligation to or that benefitted any insider within one year of filing this Bankruptcy Case. *Id.*, ¶ 7, 8.

The U.S. Department of Treasury obtained a garnishment over property of the Debtor valued at (\$9,928) for a Medicare Benefits overpayment. *Id.*, ¶ 10.

Debtor made no gifts with a total value of more than \$600.00 to any person in the two years preceding the filing of this Bankruptcy Case. *Id.*, ¶ 13.

Debtor made no gifts to any charities of more than \$600.00 in the two years preceding the filing of this Bankruptcy Case. *Id.*, ¶ 14.

Debtor paid \$3,500.00 to Sanicol Services for "alleged 'credit repair'" services. *Id.*, ¶ 17.

Looking at Schedule A/B the only vehicle listed is a 2006, three decade old dodge Nitro with 85,000 miles on it. Dckt. 11 at 3. No BMW that Debtor is making \$3,000+ a month payments on being driven by Debtor's wife is listed on Schedule A/B. On Schedule I Debtor lists his wife, who is driving the BMW, of having only \$364 a month in support payments and \$2,127 of Social Security income a month. *Id.*, p. 20-21.

BMW of North America, the creditor to whom Debtor has been making \$3,000+ a month pre-petition payments for his wife's BMW is not listed on Schedule D or F as being a creditor to whom Debtor owes any money. *Id.* at p. 10-16.

While Creditor slings allegations in opposition to confirmation, Creditor does not provide any evidence as required in federal court. Though presumably true, Creditor and Creditor's attorney having made the certifications as provided in Federal Rule of Bankruptcy Procedure 9011, such Opposition is not evidence.

At the hearing, **XXXXXXX**

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

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

The Objection to the Chapter 13 Plan filed by Darren Wallace ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of the Plan is
XXXXXXX

9. [23-20523-E-13](#)
[DPC-1](#)

LUIS GUTIERREZ
Gary Fraley

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
4-20-23 [\[20\]](#)

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on April 20, 2023. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.
--

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

- A. Debtor failed to appear at the meeting of creditors.
- B. Debtor has failed to provide 521 documents.
- C. Debtor's Rights and Responsibilities and Spousal Waiver have not been filed.

D. Debtor's Schedule H has not accurately been completed.

DISCUSSION

Trustee's objections are well-taken.

Failure to Appear at 341 Meeting

Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. *See* 11 U.S.C. § 343. Attempting to confirm a plan while failing to appear and be questioned by Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Combined Pay Stubs & Tax Returns

Debtor has failed to file a Rights and Responsibilities and Spousal Waiver document. not provided Trustee with employer payment advices for the sixty-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv); FED. R. BANKR. P. 4002(b)(2)(A). If Debtor is not employed, as indicated in Schedule I, Debtor is still required to provide proof of current income. Also, Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A)(i); FED. R. BANKR. P. 4002(b)(3). Debtor has failed to provide all necessary pay stubs and has failed to provide the tax transcript. Those are independent grounds to deny confirmation. 11 U.S.C. § 1325(a)(1).

Failure to File Chapter 13 Documents

Debtor has failed to file a Form EDC 3-060, *Spousal Waiver of Right to Claim Exemptions Pursuant to California Code of Civil Procedure § 703.140(a)(2)*, and Form EDC 3-096, *Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys*. Additionally, Debtor failed to complete Schedule H to disclose whether their non-filing spouse has any debts and whether Debtor may be a co-debtor. The court cannot address the feasibility of the Plan without these completed documents. 11 U.S.C. § 1325(a)(6).

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

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

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

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 13, 2023. By the court's calculation, 33 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

Under the facts and circumstances of this Motion, the court shortens the time to the 33 days given.

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

The Motion for Allowance of Professional Fees is granted.

Peter Cianchetta, the Attorney ("Applicant") for Dewayne Latrall Williams, the Chapter 13 Debtor ("Client"), makes a request for the Allowance of Fees and Expenses in this case. The court notes, Applicant requests "additional fees and costs" in the amount of \$6,250.04. Additionally, the Plan states Applicant opted out of the "No-Look" fees and Applicant will be paid additional fees of \$4,000.00 throughout the Plan.

Fees are requested for the period April 12, 2019 through April 13, 2023. Applicant requests fees in the amount of \$6,250.04 and costs in the amount of \$40.04.

Trustee's Opposition

Trustee filed an opposition on May 2, 2023. Dckt. 184. Trustee opposes on the grounds:

1. There is no admissible evidence to determine whether \$450 an hour is reasonable, and the rate is higher than most attorney's in the area.
2. Applicant's task billing is not adequate as tasks are not listed in details nor do they state who performed the tasks. Some of the tasks appear to be ones that could have been completed by a paralegal or support staff, not an attorney.

The Chapter 13 Trustee's Opposition raises some significant points which apply to all attorneys (and other professionals) when seeking the allowance of fees – even those attorneys who have regularly appeared in this court for decades. The Rules apply to all and are not selectively applies to only the “undeserving.”

As the Trustee notes, applicant has not provided any information of his vast experience in representing debtors and others in his career. Though well known to the court, that is not a pass for counsel to “cut the corner” and not provide the basic information as would a less well-known attorney. This may well have been a mere clerical error on Applicant's part.

Secondly, in the Application there is a summary of the dollar charges for the task billing, but not a breakout of the billings. The Trustee asserts that some relate to paralegal tasks, and other are billing more time than the Trustee commonly sees.

While leaving it for the court and the Trustee to dig out the billings for each task, there are only fourteen billing entries.

In April 2019, there is a total of .25 hours for the substitution of attorney, 1.5 hours for the Motion to Vacate the Dismissal (which includes the related declaration and notice), and .5 hours for a supplemental declaration (to address the Trustee's Opposition) for the Motion to Vacate. Those times are not unreasonable (though it is unclear where a quarter hour billing increment comes from in light of Applicant's other billings being on the tenth of an hour increment).

For the hearing to vacate the Dismissal, there is an additional 2.0 hours billed. For the separate hearing on the Motion to Confirm the Modified plan in June 2019, there is an additional 2.0 hours billed.

In June and August 2020 there is 2.4 hours billed for the Motion to Confirm Modified Plan (and the related documents) and then 1.0 hours billed for the hearing on that Motion.

Applicant also billed 1.5 hours in August 2020 to address the Trustee's Motion to Dismiss.

The court notes that while the billing records exhibit has been provided, there is no declaration (the court does not accept a “and I so swear” at the end of a motion or application as a hybrid Mo/App/Dec combined document) authenticating the exhibit nor providing the court with evidence to support the factual statements in the Application.

Also in April 2019, there is .25 hours billed for Amended Schedule J.

APPLICABLE LAW

Reasonable Fees

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

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

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

Lodestar Analysis

For bankruptcy cases in the Ninth Circuit, “the primary method” to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves “multiplying the number of hours reasonably expended by a reasonable hourly rate.” *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate, however. *See id.* (citing *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

Reasonable Billing Judgment

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

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

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

A review of the application shows that Applicant's services for the Estate include substituting as attorney, litigating a motion to vacate dismissal, amended chapter 13 documents, preparing an amended plan, and preparing this motion for compensation. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Case Management: Applicant spent 3.75 hours in this category. Applicant states they performed general case management.

Motion to Confirm: Applicant spent 11.65 hours in this category. Applicant litigated motions to confirm and modify plans.

Motion for Fees: Applicant spent 2.5 hours in this category. Applicant prepared this motion.

The court notes the above hours equal 17.9 hours of time spent in this case. However, upon review of Applicant's exhibits, Applicant only spent 17.8 hours in this case.

There is a total of 17.80 hours billed for which \$6,210.00 and \$40.04 in postal costs and expenses sought. This information is taken from Exhibit 1, the billing records, which is nearly consistent with the amounts stated in the Application (which also seeks to masquerade as a declaration, yet provides task billing that equals 17.9 hours).

Dividing \$6,210.00 by 17.80 hours results in Applicant discounting his billing rate to roughly \$348.87 an hour. This hourly rate may be more consistent with the way this Application has been prepared and filed with the court.

The persons providing the services, the time for which compensation is requested, and the hourly rates are:

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Peter L. Cianchetta	17.8	\$348.87	<u>\$6,209.89</u>
Total Fees for Period of Application			\$6,210.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$40.04 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Cost
Postage	\$30.24
Printing	\$9.80
Total Costs Requested in Application	\$40.04

RULING

Though the court could deny the Application without prejudice, for reasons stated in addressing Trustee's Opposition, and allow counsel to have to spend uncompensated time in not cutting corners and providing evidence to the court, under these facts and circumstances there is another way to go.

Applicant has "saved the Debtor's bacon" on two occasions, had to respond to multiple motions to dismiss, and has gone, for some reason, three years without seeking any compensation. While the court could reduce the fees further for time and cost to the Chapter 13 Trustee and the court in having to dig through the documents presented to find the required information, Applicant has already self-discounted sufficiently.

The court allows Applicant \$6,210.00 for additional and unanticipated fees in this case, concluding that such amount represents the reasonable fees for the services provided.

With respect to the \$30.24 in postage expenses and \$9.80 in printing expense (at \$0.05 per page), those expenses are reasonable and allowed.

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

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

Fees	\$6,210.00
Costs and Expenses	\$40.04

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

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

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

The Motion for Allowance of Fees and Expenses filed by Peter Cianchetta, the Attorney (“Applicant”) for Dewayne Latrall Williams, the Chapter 13 Debtor (“Client”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Peter Cianchetta, Professional employed by the Chapter 13 Debtor

Fees in the amount of \$6,210.00
Expenses in the amount of \$40.04,

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on April 19, 2023. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

<p>The Objection to Confirmation of Plan is sustained.</p>

Bosco Credit LLC ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Creditor's claim is misclassified.
- B. Debtor fails to provide for the curing of a default and maintenance of ongoing payments of Creditor's claim.
- C. Debtor improperly modifies the rights of Creditor by reducing its interest rate.
- D. Debtor's Plan may not have been proposed in good faith.

DISCUSSION

Creditor's objections are well-taken.

Misclassified Claim

Creditor's Claim is listed as a Class 2 claim. Pursuant to the Proof of Claim, the maturity date is in 2032, which is after the plan is completed. Pursuant to § 3.08 of the Plan, Class 2 claims are secured claims that can be modified by the Plan or have matured or will mature before the Plan is completed. 11 U.S.C. § 1322(b)(2) prohibits the modification of an obligation secured only by Debtor's residence, unless, under 11 U.S.C. § 1322(c), the claim's final payment is due prior to the final Plan payment. Here, since the maturity date is after the Plan, the claim cannot be modified, pursuant to 11 U.S.C. §§ 1322(b)(2), (c) and the claim cannot be listed as Class 2.

Failure to Cure Default and Maintain Payments

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

Here, Debtor does not propose to cure the default and maintain payments. Rather, Debtor provides a total monthly dividend. This would be proper if the claim were a Class 2 claim, however, as the court notes, it is a Class 1 claim.

Improper Modification of Claim

Debtor proposes to modify the interest rate of Creditor's claim from 6.00% to 3.00%. This modification violates 11 U.S.C. § 1322(b)(2), which prohibits the modification of an obligation secured only by Debtor's residence.

Plan Not Proposed in Good Faith

11 U.S.C. § 1325(a)(3) requires a Plan to be proposed in good faith. Here, Debtor has another active chapter 13 case ("First Case") pending in this court and in this department. Case No. 18-23462. The First Case has been pending for almost five years now.

Creditor states the present bankruptcy case ("Second Case") was filed on the eve of a foreclosure sale, even though Debtor's First Case allows for surrender of the property subject to the foreclosure and termination of the stay. It is unclear to the court why Debtor would file a new case, while their First Case is still pending. Given it occurred the eve of a foreclosure sale, Debtor's intention may have been to reinstate the automatic stay, protecting the property from foreclosure. This raises serious concerns regarding the good faith of the Debtor.

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

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

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

The Objection to the Chapter 13 Plan filed by Bosco Credit LLC (“Creditor”) holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

12. [23-20566-E-13](#)
[DPC-1](#)

JACKY LIN
Richard Jare

**OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK**
4-20-23 [15]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on April 20, 2023. By the court’s calculation, 26 days’ notice was provided. 14 days’ notice is required.

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

The Objection to Confirmation of Plan is sustained.
--

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

A. Debtor’s Plan fails the liquidation analysis.

DISCUSSION

Trustee’s objections are well-taken.

Debtor Fails Liquidation Analysis

Debtor’s plan fails the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Trustee states that Debtor has a ½ interest in real property located at 1863 Mammoth Way (“Property”). The Property is not scheduled as Debtor’s primary residence.

Debtor claims on their Amended Schedule C, Dckt. 14, that they only have a remainder ½ interest in the Property with their sister from a resulting trust in favor of their mother. However, Trustee reviewed the Deed of Trust which indicates that the Property was transferred to a Desiree Lin and Debtor as joint tenants. The Deed does not indicate anything other than a ½ interest in the entirety of the Property.

Debtor is only claiming an exemption in the amount of \$10,000.00 in this Property. Trustee values the Property at approximately \$400,000.00. The Plan proposes to pay unsecured creditors in the amount of \$26,728.24, however, scheduled unsecured claims total \$83,525.76. In a liquidation, unsecured claims would receive payment in full from the Property.

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

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

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

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

FINAL RULINGS

13. [22-20157](#)-E-13
[PGM-2](#)

NELSON MADSEN/SHARON
BURNS
Peter Macaluso

CONTINUED OBJECTION TO NOTICE
OF MORTGAGE PAYMENT CHANGE
AND/OR MOTION FOR COMPENSATION
FOR PETER G. MACALUSO, DEBTORS
ATTORNEY(S)
2-25-23 [[90](#)]

Pursuant to prior order, Dckt. 99, the Objection to Notice of Mortgage Payment Change and Request for Attorney's Fees was dismissed. **This matter is removed from the Calendar.**

Final Ruling: No appearance at the May 16, 2023 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on February 27, 2023. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The Objection to Response to Notice of Final Cure is overruled, Creditor having filed an Amended Response on May 11, 2023 stating that "Creditor agrees that the debtor(s) have paid in full amount required to cure the prepetition default on creditor's claim." May 5, 2023 Docket Entry.

Debtor filed the pending Opposition, Dckt. 63, opposing Deutsche Bank National Trustee Company, as Trustee for GSAMP Trust 2005-WMC1's ("Creditor") Response to Trustee's Notice of Final Cure. Response, filed February 8, 2023. Pursuant to Federal Rules of Bankruptcy Procedure 3002.1(h), the Debtor can, by motion, request the court to determine whether the Debtor has cured the default and paid all required postpetition amounts. Federal Rules of Bankruptcy Procedure 3002.1(h); 9 Collier on Bankruptcy P 3002.1.04 (16th 2023).

All though filed as an "Opposition," the court treats the opposition as an Objection to Creditor's Response.

DISCUSSION

Within 21 days after service of the notice of final cure payment, the holder of the claim shall file and serve on the debtor, debtor's counsel, and the trustee a statement indicating (1) whether it agrees that the debtor has paid in full the amount required to cure the default on the claim, and (2) whether the debtor

is otherwise current on all payments consistent with the Federal Bankruptcy Code 1322(b)(5). Federal Rules of Bankruptcy Procedure 3002.1(g). The statement shall itemize the required cure or post-petition amounts, if any, that the holder contends remain unpaid as of the date of the response.

Trustee's Notice of Final Cure

The Chapter 13 Trustee, David P. Cusick, ("Trustee") filed a Notice of Final Cure Payment on January 30, 2023. The Notice of Final Cure indicates that Debtor has paid Creditor's arrearages in full.

Creditor's Response

Creditor filed a response to notice of final cure payment on February 8, 2023. Response, filed February 8, 2023. Creditor indicated that Debtor has not cured arrears, still owing \$5,750.28.

Debtor's Opposition

Debtor opposes Creditor's Response on the following grounds:

- A. Debtor has completed the Plan, paying creditor a total of 61 payments.
- B. Creditor's claim that Debtor is \$5,750.28 delinquent incorrectly reflects the payments received and is a unsubstantiated assertion.

Creditor's Response to Debtor's Opposition

Creditor filed a Response on March 14, 2023. Dckt. 67. Creditor states, "[a]fter the Response to Notice of Final Cure was filed, Debtor made additional payments, Creditor has determined the account is now due for March 1, 2023. However, the Post-Petition Fee in the amount of \$900.00 remains unpaid." Further, Creditor indicates they prepared an Amended Response that was filed on March 14, 2023. Upon review of the docket, no Amended Response has been filed.

It appears that Creditor may be conceding that the \$5,750.28 has been satisfied. However, Creditor indicates that there is an additional \$900 "Post-Petition Fee." Dckt. 67. It is not clear to the court what this additional fee is for.

At the hearing, counsel for Creditor reported that there was still \$900 owed based on a 2018 Notice of Post-Petition Mortgage expenses. Debtor's counsel stated that the Debtor had made the payments and that the Objection to Notice of Cure was inaccurate and required Debtor to respond. Thus, Debtor argues that he is entitled to recover his attorney's fees.

It appears that both the Debtor and Creditor need to provide the other with documentation of the alleged defaults and payments. Creditor's counsel stated that the default, all but the \$900.00 was cured. However, nobody could tell the court when those payments were made by Debtor.

The court continues the hearing so that the attorneys can obtain documentation of their assertions, provide it to the other side, and determine what bona fide disputes actually exist(ed).

Debtor's Supplemental Opposition

Debtor filed a Supplemental Opposition on April 11, 2023. Dckt. 74. Debtor states Creditor has failed to support their claim of post-petition delinquency and requests the claim be deemed current as of December 1, 2022.^{FN. 1.}

FN. 1. Debtor's attorney makes an additional claim that they are the prevailing party. Additionally, Debtor's attorney discusses an attorney's fees provision in Creditor's Proof of Claim. Also, Debtor states they have billed \$3,475.00. Debtor's attorney, however, does not make a specific request for attorney's fees. Rather, in their "Conclusion" they simply request the claim be deemed current. It is not clear whether Debtor's attorney is seeking an award of attorney's fees.

May 2, 2023 Hearing

At the hearing, counsel for the Debtor reported that a further continuance will allow them to resolve this matter. Counsel for Creditor agreed. The Parties requested a two week continuance.

May 16, 2023 Hearing

Creditor filed an Amended Response on May 11, 2023 stating that "Creditor agrees that the debtor(s) have paid in full amount required to cure the prepetition default on creditor's claim." May 5, 2023 Docket Entry. The constructive efforts of the Parties and their respective counsel have led to the consensual resolution of this Objection to Final Cure.

The Objection to Final Cure is overruled.

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

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

The Objection to Creditor's Response to Notice of Final Cure filed by the Chapter 13 debtor, Martha Suarez Garcia ("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 Objection to Response to Notice of Final Cure is overruled.

15 thru 16

Final Ruling: No appearance at the May 16, 2023 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Persons who have filed a Request for Notice, and Office of the United States Trustee on February 8, 2023. By the court’s calculation, 56 days’ notice was provided. 28 days’ notice is required.

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

<p>The Motion to Dismiss is denied without prejudice.</p>
--

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

1. the debtor, Paul Nickson (“Debtor”), delinquent on plan payments

DEBTOR’S RESPONSE

Debtor filed a Response on March 20, 2023. Dckt. 83. Debtor states he will file a modified plan such that he is no longer delinquent.

TRUSTEE’S REPLY TO DEBTOR’S RESPONSE

Trustee filed a Reply to Debtor’s Response on March 27, 2023. Trustee acknowledges that Debtor filed a motion to modify but does not believe it will be approved, due to Debtor not paying unsecured claims in full. Trustee requests a continuance to after the date of the hearing on the Motion to Confirm.

FILING OF MODIFIED PLAN

Debtor filed a Modified Plan and Motion to Confirm on March 21, 2023. Dckt. 90. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 88. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with

particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor's personal knowledge. FED. R. EVID. 601, 602.

The hearing on the Motion to Dismiss is continued to be conducted in conjunction with the hearing on the Motion to Confirm.

May 16, 2023 Hearing

The court confirmed the proposed Modified Plan, no oppositions thereto having been filed.

The Motion to Dismiss is denied without prejudice.

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

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

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the Motion to Dismiss is denied without prejudice.

Final Ruling: No appearance at the May 16, 2023 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on March 21, 2023. By the court's calculation, 56 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

<p>The Motion to Confirm the Modified Plan is granted.</p>

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Paul Nickson ("Debtor"), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on May 1, 2023. Dckt. 101. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Paul Nickson ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on March 21, 2023, is confirmed. Debtor's Counsel shall

prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

17. [17-22214-E-13](#)
[DPC-2](#)

RICHARD CRABTREE
Doug Jacobs

CONTINUED MOTION TO DISMISS
CASE
3-6-23 [81]

Final Ruling: No appearance at the May 16, 2023 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on March 6, 2023. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

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

<p>The Motion to Dismiss is denied without prejudice.</p>
--

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

1. the debtor, Richard Lee Crabtree (“Debtor”), is delinquent in Plan payments.

DEBTOR’S RESPONSE

Debtor filed a Response on March 21, 2023. Dckt. 85. Debtor admits to being delinquent, however, states they will be requesting a hardship discharge for medical reasons.

Upon the court’s review of the file, no motion for entry of a hardship discharge has been filed. At the hearing, counsel for Debtor reported he is waiting for his client’s declaration to file with the Motion for Entry of Hardship Discharge.

DISCUSSION

Delinquent

Debtor is \$10,052.00 delinquent in plan payments. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor's counsel appeared, addressed to the court and the Chapter 13 Trustee that the Motion for a Hardship Discharge was prepared, but that he was waiting on the return of a declaration from his client. The return of the declaration was delayed due to the Debtor's health issues.

The Trustee concurred in the request for a continuance.

Debtor's Attorney's Declaration

Debtor's Attorney filed a declaration on April 21, 2023. Dckt. 96. Debtor's Attorney states due to medical reasons, Debtor is no longer able to make Plan payments. Debtor's Attorney has filed a Motion for Hardship Discharge set for calendar May 16, 2023 at 2:00 p.m. Dckt. 92.

The court continues this matter to be heard in conjunction with the Motion for Hardship Discharge, on May 16, 2023 at 2:00 p.m.

May 16, 2023 Hearing

The court having granted Debtor's Motion for Entry of Hardship Discharge, this Motion is denied without prejudice.

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

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

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is denied without prejudice.

Final Ruling: No appearance at the May 16, 2023 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 14, 2023. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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

<p>The Motion to Approve Loan Modification is granted.</p>

The Motion to Approve Loan Modification filed by Manjit Singh ("Debtor") seeks court approval for Debtor to incur post-petition credit. PHH Mortgage ("Creditor"), whose claim the Plan provides for in Class 1, has agreed to a loan modification that will reduce Debtor's mortgage payment from the current \$2,478.12 per month to \$1,734.37 per month. The interest rate remains 3.5%. The modification will allow Debtor to modify payments and allow them to be current on loan payments.

The Motion is supported by the Declaration of Manjit Singh. Dckt. 23. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms.

Trustee's Nonopposition

Chapter 13 Trustee David Cusick ("Trustee") filed a nonopposition on May 2, 2023. Dckt. 31. Trustee states Debtor is currently delinquent as they have not made their first Plan payment. However, Debtor requests the Motion be granted.

Discussion

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

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

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

The Motion to Approve Loan Modification filed by Manjit Singh ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the court authorizes Manjit Singh to amend the terms of the loan with PHH Mortgage ("Creditor"), which is secured by the real property commonly known as 878 Trehowel Drive in Roseville, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion (Dckt. 24).

IT IS FURTHER ORDERED that the Debtor is authorized to make the monthly payments directly to creditor on its secured claim, and not through the Trustee, for the months of April through August 2023, pending approval of a final loan modification.

Final Ruling: No appearance at the May 16, 2023 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 17, 2023. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

The Motion for Entry of Hardship Discharge is granted.

Richard Lee Crabtree (“Debtor”) moves for entry of a hardship discharge on the grounds Debtor has been diagnosed with a health condition that has caused them to no longer be able to work and afford Plan payments. Debtor has provided the declaration of their doctor, Francis McDermott, M.D., as evidence in support of this Motion. Dckt. 93. Debtor argues they are entitled to a hardship discharge because Trustee has distributed more to unsecured creditors over the life of the Plan than they would have received in a chapter 7 bankruptcy, and modification is not feasible given Debtor’s financial situation.

Trustee’s Response

Trustee filed a response on May 2, 2023. Dckt. 98. Trustee states they do not oppose the Motion, as it appears Debtor is no longer a practicing attorney.

APPLICABLE LAW

Section 1328(b) of the Bankruptcy Code states:

Subject to subsection (d), at any time after the confirmation of the plan and after notice and a hearing, the court may grant a discharge to a debtor that has not completed payments under the plan only if–

(1) the debtor’s failure to complete such payments is due to circumstances for which the debtor should not justly be held accountable;

(2) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 of this title on such date; and

(3) modification of the plan under section 1329 of this title is not practicable.

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

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

- A. Whether the debtor has presented substantial evidence that he or she had the ability and intention to perform under the plan at the time of confirmation;
- B. Whether the debtor did materially perform under the plan from the date of confirmation until the date of the intervening event or events;
- C. Whether the intervening event or events were reasonably foreseeable at the time of confirmation of the Chapter 13 plan;
- D. Whether the intervening event or events are expected to continue in the reasonably foreseeable future;
- E. Whether the debtor had control, direct or indirect, of the intervening event or events; and
- F. Whether the intervening event or events constituted a sufficient and proximate cause for the failure to make the required payments.

Id.

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

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

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

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

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

DISCUSSION

Debtor has demonstrated to the court that the elements of 11 U.S.C. § 1328(b) have been met. While some courts have required that a debtor face a catastrophe, that is not a requirement. In this case, however, there has been a clear catastrophe in Debtor’s life that prevents Debtor from complying with and completing the Plan. The Motion is granted, and a hardship discharge under 11 U.S.C. § 1328(b) is entered for Debtor in this case.

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

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

The Motion for Hardship Discharge filed by Richard Lee Crabtree (“Debtor”) having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and the court shall enter a “hardship” discharge pursuant to 11 U.S.C. § 1328(b) for Richard Lee Crabtree in this case based on the Plan as performed as of the May 16, 2023 hearing date on this Motion.

20. [22-21314-E-13](#)
[DPC-3](#)

NADIA ZHIRY
Peter Macaluso

OBJECTION TO DISCHARGE BY
DAVID P. CUSICK
4-10-23 [\[165\]](#)

Final Ruling: No appearance at the May 16, 2023 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor’s Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on April 10, 2023. By the court’s calculation, 36 days’ notice was provided. 28 days’ notice is required.

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

The Objection to Discharge is sustained.

David Cusick, the Chapter 13 Trustee (“Objector”) objects to Nadia Zhiry’s (“Debtor”) discharge in this case. Objector argues that Debtor is not entitled to a discharge in the instant bankruptcy case because Debtor previously received a discharge in a Chapter 7 case.

Debtor filed a Chapter 7 bankruptcy case on July 29, 2021. Case No. 21-22759. Debtor received a discharge on April 20, 2022. Case No. 21-22759, Dckt. 85.

The instant case was filed under Chapter 13 on May 25, 2022.

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

Here, Debtor received a discharge under 11 U.S.C. § 727 on April 20, 2022, which is less than four years preceding the date of the filing of the instant case. Case No. 21-22759, Dckt. 85. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), Debtor is not eligible for a discharge in the instant case.

Therefore, the Objection is sustained. Upon successful completion of the instant case (Case No. 22-21314), the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant case.

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

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

The Objection to Discharge filed by David Cusick, the Chapter 13 Trustee, (“Objector”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to Discharge is sustained, and upon successful completion of the instant case, Case No. 22-21314, the case shall be closed without the entry of a discharge.

21 thru 22

Final Ruling: No appearance at the May 16, 2023 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, and parties requesting special notice on April 19, 2023. By the court’s calculation, 27 days’ notice was provided. 14 days’ notice is required.

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

The Objection is sustained, and the proposed Chapter 13 Plan is not confirmed.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Objection, Debtor filed an Amended Plan and corresponding Motion to Confirm on April 26, 2023. Dckts. 29. Filing a new plan is a *de facto* withdrawal of the pending plan. 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 Confirmation the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

22. [23-20614-E-13](#)
[KMM-1](#)

HAYDEN/MANDY COIT
Mikalah Liviakis

**OBJECTION TO CONFIRMATION OF
PLAN BY WILMINGTON TRUST,
NATIONAL ASSOCIATION
4-19-23 [18]**

Final Ruling: No appearance at the May 16, 2023 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee and Office of the United States Trustee on April 19, 2023. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Objection is sustained, and the proposed Chapter 13 Plan is not confirmed.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Objection, Debtor filed an Amended Plan and corresponding Motion to Confirm on April 26, 2023. Dckts. 29. Filing a new plan is a *de facto* withdrawal of the pending plan. 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 Confirmation the Chapter 13 Plan filed Wilmington Trust, National Association (“Creditor”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

23. [18-23016-E-13](#) **TOMMY/SHERRI CORDRAY** **MOTION TO MODIFY PLAN**
[PLG-2](#) **Steven Alpert** **4-11-23 [70]**

Final Ruling: No appearance at the May 16, 2023 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 11, 2023. By the court’s calculation, 35 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.
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11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Tommy Lee Cordray and Sherri Annette Cordray (“Debtor”), has filed evidence in support of confirmation. The Chapter

13 Trustee, David Cusick (“Trustee”), filed a Non-Opposition on April 26, 2023. Dckt. 78. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed. ^{FN.1.}

FN. 1. The court notes that Debtor and Debtor’s counsel have provided the court and parties in interest with personal knowledge, factual testimony by the two debtors in the Declaration in support of the Motion. While the court can get “cranky” with attorneys in address less well prepared testimony (such as when the non-attorney consumer debtor provides the court with extensive legal opinions in the declaration, leaving off factual testimony). The court does recognize good testimony, as for the present motion, and endeavors to also acknowledge such good lawyering and active participation by clients.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Tommy Lee Cordray and Sherri Annette Cordray (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor’s Modified Chapter 13 Plan filed on April 11, 2023, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

24. [23-20612](#)-E-13
[SKI](#)-1

KENNETH CARUTHERS
Julius Cherry

**OBJECTION TO CONFIRMATION OF
PLAN BY CARMAX BUSINESS
SERVICES, LLC**
4-12-23 [[14](#)]

<p>Pursuant to prior order of the court, the hearing on the Objection to Confirmation has been continued to June 13, 2023 at 2:00 p.m.</p>
