UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

May 25, 2021 at 2:00 p.m.

1.	**20-24700-E-13**	**WILLIAM REDDIN**	**MOTION TO CONFIRM PLAN**
	WDR-1	**Timothy Hamilton**	**4-20-21 [98]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 20, 2021. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

The debtor, William Donald Reddin ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly payments of $3,500. Amended Plan, Dckt. 101. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CREDITOR'S NON-OPPOSITION

James D. Price and Sharee E. Price ("Creditor Price") holding a secured claim filed a Statement of Non-Opposition on April 27, 2021. Dckt. 105.

CREDITOR'S NON-OPPOSITION

Rob Croswhite ("Creditor Croswhite") holding a secured claim filed a Statement of Non-Opposition on April 28, 2021. Dckt. 106.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on May 11, 2021. Dckt. 110. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor is delinquent in plan payments.

B. Debtor has included a non-standard provision that may not be needed but failed to check the box at section 1.02.

DISCUSSION

Nonstandard Provision

Debtor's Plan includes a Nonstandard Provision stating:

> Debtor will submit $3500 per month pursuant the Chapter 13 plan on file with the court. Both creditors, Crosswhite and Price are now unsecured creditors pursuant to the payment to Crosswhite by debtor of the secured portion of creditors claim. Debtor intends to satisfy both obligations to Crosswhite and Price through submission of this Chapter 13 plan through the supervision and control by the trustee on a monthly basis the sum of $3500 to be distributed pursuant to the claims filed by the debtor's creditors Crosswhite and Price.

Amended Plan, at p. 7. Trustee argues that he cannot assess feasibility where this nonstandard provision appears to be integral to the administration of the plan but Debtor failed to check the box at section 1.02. Trustee adds that non-standard provisions may not be needed for the plan.

Section 1.02 specifically states that

> If there are nonstandard provision this box must be checked __ A nonstandard provision will be given no effect unless this section indicates one is included in section 7 and it appears in section.

Id. at 1. Here, Debtor failed to check the box but included a nonstandard provision under section 7. Thus, this nonstandard provision will not be given effect.

Delinquency

The Chapter 13 Trustee asserts that Debtor is $19,500.00 delinquent in plan payments, which represents multiple months of the $3,500.00 plan payment. According to the Chapter 13 Trustee, the Plan in § 2.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

The court's review of the Plan discloses that the following provisions for treatment of claims are left blank.

A. Section C – Secured Claims

1. ¶ 3.07 Class 1 Secured Claims - Defaults Cured Through Plan

   a. None

2. ¶ 3.08 Class 2 Secured Claims – Paid in Full Through Plan

   a. None

3. ¶ 3.09 Class 3 Secured Claims – Surrender of Collateral

   a. None

4. ¶ 3.10 Class 4 Secured Claims – Non-Default, Paid Outside of Plan

   a. None

B. Section D – Unsecured Claims

1. ¶ 3.12 Class 4 Priority Unsecured Claims

   a. None

2. ¶ 3.13 Class 6 Non-Priority Unsecured Claims – Paid Outside of Plan

   a. None

3. ¶ 3.14 Class 7 General Unsecured Claims – Paid Through Plan

   a. None

Chapter 13 Plan (not designated as an amended plan); Dckt. 101.

As identified by the Chapter 13 Trustee, Debtor has included an Addendum to the Plan which provides:

> Debtor will submit $3500 per month pursuant the Chapter 13 plan on file with the court. Both creditors, Crosswhite and Price are now unsecured creditors pursuant to the payment to Crosswhite by debtor of the secured portion of creditors claim. Debtor intends to satisfy both obligations to Crosswhite and Price through submission of this Chapter 13 plan through the supervision and control by the trustee on a monthly basis the sum of $3500 to be distributed pursuant to the claims filed by the debtor's creditors Crosswhite and Price.

Id. At 7.

As written, the Plan is blank, providing no distribution dividend for any claims – whether secured or unsecured. The Plan does provide for a $3,500.00 a month plan payment to be made by Debtor, for a total funding of $182,000. After payment of the Chapter 13 fees of $18,200, there would be $163,800.00 for distribution for creditor claims.

Two proofs of claim have been filed in this case. Second Amended Claim 1-3 filed by James and Sharee Price for a general unsecured claim in the amount of ($114,037.90). Amended Claim 2-2 has been filed by Robert Croswhite for a general unsecured claim of ($72,920.58). These are the only proofs of claim filed, which total ($186,958.48).

The Plan being funded with $163,800.00 for distribution on creditor claims and there being ($186,958.48), it appears that the Class 7 general unsecured claim treatment should state that it provides for a dividend of not less than 85%. As currently written, it does not provide for a dividend to be made on general unsecured claims.

While Debtor may in good faith be intending to provide in the Plan for payment in full of the unsecured claims, this Plan does not provide for such payments and does not bind Debtor to such a plan.

First, no additional provision is required. Rather, Debtor merely needs to complete the provisions of ¶ 3.14, stating that Debtor will provide for a 100% dividend on the ($186,958.48) in unsecured claims. If Debtor intends to make a pro rata distribution based on funding of $3,500.00 for fifty-two (52) months, then ¶ 3.14 would state that a dividend of at least 85% would be paid through the Plan. No additional provision is required to provide for such treatment.

At the hearing, **xxxxxxx**

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

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

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

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

2.	**17-21208-E-13** **MET-9**	**LOUIS BROWN** **Mary Ellen Terranella**	**MOTION TO REFINANCE** **4-27-21 [211]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on April 27, 2021. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion to Refinance is granted.

The Motion to Approve Loan Modification filed by the representative of Louis Frank Brown ("Debtor") seeks court approval for Debtor's representative to incur post-petition credit. Pacific Community Lenders ("Creditor"), has agreed to a refinance of the mortgage loan in which Debtor resided when the Chapter 13 case was filed, and on which Debtor's representative is on title. Santander Bank, N.A. currently holds the loan, and the Plan provides for the claim in Class 1.

Through this refinance, the loan is a 30 year loan in the amount of $305,250 and a fixed rate of 2.25%, with Debtor's representative making principal and interest payments in the amount of $1,166.81 and $310.96 for taxes and insurance, for a monthly payment of $1,675.61.

The Motion is supported by the Declaration of Lewis G. Brown, the son of Debtor, now serving as Debtor's representative. Dckt. 213. The Declaration affirms the representative's desire to obtain the post-petition financing and provides evidence of the representative's ability to pay this claim on the modified terms.

The Chapter 13 Trustee, David P. Cusick, does not oppose this refinance and notes that the Payoff worksheet includes the Trustee's estimate of the amount sufficient to pay off the Chapter 13 case. Dckt. 218.

Creditor Santander filed a Response on May 11, 2021 stating non-opposition to the refinance provided the following provisions are included in the order:

> 1. Santander Bank, N.A.'s consent to the Motion to Obtain Credit is contingent upon the payment of Santander Bank, N.A.'s first priority lien on the Property in full from the proceeds of the refinance; and
>
> 2. Santander Bank, N.A.'s claim shall be paid off in full prior to releasing its lien on the Property; and
>
> 3. Santander Bank, N.A. is authorized to submit an updated payoff demand to the appropriate escrow company facilitating the refinance closer in time to the closing of the proposed refinance.

Dckt. 216. Creditor states that as of April 27, 2021, the payoff of its loan is approximately $221,479.74.

It appears that Santander believes/admits that whenever a court authorizes a trustee or debtor exercising the powers and duties of a trustee to obtain credit as being free and clear of a creditor's lien, stripping that lien from the property that is the subject of obtaining the credit.

Santander then asserts that before it releases its lien, that it must be paid in full, rather than requiring payment in a commercially reasonable manner through the loan escrow. This appears to be an assertion that Debtor must pay Santander in full before Debtor can obtain the new credit being authorized for which it must give a new lender a lien on the property.

Santander then believes/admits that unless this court authorizes Santander to plan its demand in escrow for payment, it cannot do so and the debtor could use the court's order to refinance the property and leave Santander out in the cold - not paid on its claim and holding a junior lien to the new financing obtained by Debtor.

While the court appreciates Santander and its counsel stepping up and making it clear to the Debtor and the court the amount of Santander's secured claim that Debtor will have to pay off to get Santander to release its lien as part of the refinancing of the property, the requests/requirements of Santander go well beyond that. The court does not need to authorize Santander to protect its property rights and properly state what it has to be paid to voluntarily release its lien.

DISCUSSION

This post-petition financing is consistent with Debtor's ability to fund the plan in that it will allow Debtor's representative to pay off creditor Santander's claim and pay off Debtor's Chapter 13 Plan.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court because delays in closing may cause a change in interest rate or other fees and charges, or require new title documents to be drawn.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 6004(h), and this part of the requested relief is granted.

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 Refinance is granted.

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 Refinance filed by the representative of Louis Frank Brown ("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 Louis Frank Brown to refinance the terms of the loan with Pacific Community Lenders ("Creditor"), which is secured by the real property commonly known as 400 Lakeside Drive, Vallejo, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion (Dckt. 214).
>
> **IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 6004(h) is waived for cause.

3.	**21-20119-E-13 DPC-1**	**ALEJANDRO/ROSEMARIE RODRIGUEZ Mark Wolff**	**CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 2-25-21 [22]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on February 25, 2021. 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.

The Objection to Confirmation of Plan is xxxxx.

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

A. Debtor has failed to provide business documents.

B. The Plan unfairly discriminates against creditors with general unsecured claims.

C. Debtor has failed to accurately complete the Chapter 13 documents.

DISCUSSION

Trustee's objections are well-taken.

Failure to File Documents Related to Business

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

A. An incomplete questionnaire,
B. Two years of tax returns,
C. Six months of profit and loss statements,
D. Six months of bank account statements

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

Unfair Discrimination Against Unsecured Claims

Trustee also opposes confirmation due to possible unfair discrimination to unsecured claims under 11 U.S.C. § 1322(b)(1). Debtor proposes to pay 7.00% to unsecured claims. However, on the eve of bankruptcy (this case being filed on January 15, 2021) Debtor made a lump sum payment to JPMorgan Chase (holder of the note for Debtor's residence) in the amount of $19,500. This money came from assets of the Debtor that were sold to Debtor's son (which sale may or may not have been for fair market value).[Fn.1]

FN. 1. Debtor lists one child as a dependent on Schedule J, a 23 year old son who is identified as a "student." It is not clear if this dependent son is the son who purchased the asset.

The JPMorgan Chase Bank Proof of Claim, No. 6-1, has loan documentation attached that it is a home equity loan, secured only by Debtor's residence.

On Schedule D Debtor lists Wells Fargo Home Mortgage having a secured claim for $251,743 secured by Debtor's residence, which Debtor values at $400,000. Dckt. 1 at 23. On Amended Schedule A/B Debtor increases the stated value of this Property to $460,000. Dckt. 51 at 2. Debtor claims a homestead exemption of $300,000 in this property on Schedule C.

JPMorgan Chase Bank is also listed as having a secured claim of $38,872, for which the collateral is listed as a 2016 Ford Edge and that is "also secured by house." *Id*., 22. In Proof of Claim No. 6-1 JPMorgan Chase Bank states that it has a lien only on Debtor's residence to secure its claim in the amount of $16,236.60.

Incomplete and Inaccurate Chapter 13 Documents

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Trustee asserts that Debtor has failed to provide referenced documents and has also failed to accurately complete the Chapter 13 documents with information provided at the Meeting of Creditors, such as:

- Debtor failed to provide a list of household goods and furnishings with Schedule B;

- Debtor omitted 31-year old son living with Debtor from Schedules I and J

- Debtors have consolidated all bank accounts and Trustee is unable to differentiate wage income from business income

- Debtors failed to list several payments made to creditors in the last 90 days

- Debtors closed two accounts and combined these accounts into one entry, without indicating the institutions, the specific accounts closed, when they were closed, and the balance of each account.

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

At the first hearing on this Objection, the Parties requested that the hearing be continued to allow Debtor to address the issues with the Trustee.

Debtor's Response

On May 11, 2021, Debtor filed a Response asserting the following:

1. Debtor provided Trustee with business documents, income tax returns, additional profit and loss statements showing income and expenses, and bank statements.

2. The Plan does not discriminate as to the general unsecured creditors because the Plan does not sub categorize unsecured creditors but follows the designated classes as set out in the Chapter 13 plan adopted by the Eastern District of California.

3. Debtor made a large payment to JPMorgan case, creditor with secured claim, prior to the filing of the case, to bring Debtor current in payments and reduce the debt which has now allowed Debtor to pay an additional $118.77 into their plan. Therefore, Debtor is proposing to amend the plan so as to increase their monthly payment by that amount beginning June 2021, which will then increase the amount available to general unsecured creditors.

4. Debtor has filed amended Schedules to correct missing information, include the missing attachment to Schedule A/B, correcting exemptions, adjusting withholdings, changing number of dependents, and decreasing the amount of direct payment to JPMorgan Chase.

5. Debtor has also filed an Amended Statement of Financial Affairs correcting business income, disclosure of parties to whom Debtor paid $6,825.00 or more in the 90 days prior to filing.

6. Lastly, Debtor filed an Amended Form 122C correcting the median income for a household of three persons.

Dckt. 50. Debtor thus requests that the Plan be confirmed with a modification, an increase in plan payments from $826.00 to $944.77 beginning June 2021.

Trustee's Reply

Trustee filed a Reply confirming receipt of the business documents and accepts Debtor's proposal to increase the plan payment to $944.77 starting with the June 2021 payment. Dckt. 54. However, Trustee notes that although Debtor has filed Amended Schedules, Debtor appears to be improperly using C.C.P. §704.070 on Amended Schedule C exempting business income. Trustee further notes that an Objection to Claim of Exemption will be filed if Debtor does not further amend Schedule C.

May 25, 2021 Hearing

At the hearing xxxxxxxx

4. **21-20920-E-13 DPC-1** **TONI HAMILTON Richard Jare** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 4-28-21 [39]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on April 28, 2021. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that plan payments may not be feasible.

DISCUSSION

Trustee's objections are well-taken.

Feasibility

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). According to Trustee, Debtor has listed a debt with Caliber Home Loans in Class 4 of her plan but failed to include that there are arrears. Trustee alleges that at the Meeting of Creditors, the Debtor stated that her sister takes care of the home but has not shown any evidence that she intends or is willing to cure the arrears which was shown in the claim in the Debtor's prior case, #19-25084 Claim #7. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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

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

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

5. **19-22537-E-13 SLE-3** **JERRY JORS** **Steele Lanphier** **MOTION TO SET ASIDE DISMISSAL OF CASE 5-4-21 [70]**

DEBTOR DISMISSED: 03/05/2021

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 4, 2021. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

The Motion to Vacate is ~~denied, and the Order Dismissing this Bankruptcy Case (Dckt. xx) is vacated~~.

Jerry William Jors ("Debtor") filed the instant case on April 24, 2019. Dckt. 1. A plan was confirmed on July 16, 2019, and an order confirming the plan was entered on July 23, 2019. Dckt. 41 & 43.

On February 1, 2021, the Chapter 13 Trustee, David Cusick ("Trustee"), filed a Motion to Dismiss the Case due to Debtor's delinquency in plan payments in the amount of $6,827.90. Dckt. 62. On March 3, 2021, a hearing on the Motion to Dismiss was held, and the Motion was granted. Dckt. 66. The ruling was final because Debtor did not file any opposition.

On May 4, 2021, Debtor filed this instant Motion to Vacate, claiming Debtor mistakenly believed that when he cured the delinquency, TFS would notify Trustee about the payment by the time of the hearing.

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

Trustee's Response

On May 11, 2021, Trustee filed a Response stating the following:

1. Debtor has been delinquent the entire case, starting with his first payment in May 2019, sometimes was delinquent three months at a time; and by the time Trustee filed the Motion to Dismiss, Debtor had been delinquent over five payments.

The Trustee asserts that Debtor's defaults has occurred as follow:

Debtor defaulted in the first payment that was due in this case in May 2019.

Debtor consistently was one month in default in this case, and in October 2020 was three months in default.

When the present Motion to Dismiss was filed Debtor was five months in default in plan payments.

2. Debtor fails to explain why the Debtor missed payments and how the issues has been cured.

3. Vacating the dismissal is delay that is prejudicial to creditors because the case was dismissed almost three months prior to the hearing on the instant motion and to open the case would cause burden in the administration of the case and cause significant confusion to creditors who believed that the case was dismissed. Additionally, vacating the dismissal does not reinstate the automatic stay which would cause further confusion in the case.

4. Debtor failed to file an Opposition to the Motion to Dismiss where the motion was filed according to Local Rule 9014-1(f)(1).

5. Although Debtor scheduled a payment on March 2, 2021, the delinquency was not timely cured because due to banking laws, Trustee did not actually receive the payment until March 9, 2021.

6. Since the Motion to Vacate was not timely filed, the Trustee issued a Debtor Refund in the case on March 31, 2021. If the court vacates the dismissal, the funds would have to be returned to the Trustee, and Debtor would need to pay $13,764.31 to bring the case current.

Dckt. 77.

APPLICABLE LAW

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

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

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

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

(4) the judgment is void;

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

(6) any other reason that justifies relief.

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

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

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

DISCUSSION

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

The sole ground for the Motion to Dismiss was delinquency in plan payments. As a motion under Local Bankruptcy Rule 9014-1(f)(1), Debtor and Debtor's counsel were required to oppose the Motion

in writing no later than fourteen days prior to the hearing. Instead, Debtor did not file an Opposition and let the court issue a final ruling without any argument.

Moreover, it seems Debtor has glossed over the continuing (it may be that Debtor started one month late and did not adjust the plan to take that into account) default and the substantial monthly defaults. Debtor has failed to address in his Declaration what he would do different in order to prevent such delinquencies; or has provided a court with testimony as to the financial issues encountered and what has been done to address such issues.

The most current income and expense information for the court to consider are Debtor's Schedules I and J filed in 2019. Dckt. 1. Debtor identifies having monthly income of $3,404.00 after withholdings. $925.00 of income identified as "Daughter's [presumably one of the dependent children] Contribution to Household." This is also stated on the Exhibit filed in support of the Motion to Confirm the Amended Plan. Dckt. 24 at 3.

On Schedule J Debtor lists two adult (33 years and 46 years old) children as dependents that live in Debtor's household. Dckt. 1 at 31-32. Debtor states having ($1,741.00) a month in expenses for the household of three adults. Debtor computes having $1,663 in projected income to fund the Plan on Schedule J. On the Schedule J form filed as an Exhibit in support of the Motion to Confirm the Amended Plan lists ($1,751.00) in expenses and $1,653.00 in projected disposable income. Dckt. 24 at 4-5.

It may well be that the defaults are caused by Debtor not having the financial ability to perform a Plan. Looking at Schedule J, in which Debtor states his expenses for the three adult family unit under penalty of perjury, it appears that the stated expenses are not realistic or reasonable. Some of these questionable expenses are:

A. Food and Housekeeping Supplies.....($250.00)

Assuming $35 a month for housekeeping supplies, that leave $215.00 a month for food. For three persons, in a thirty day month, that allows $0.79 for food per meal per person.

B. Mental and Dental Expenses.....($50.00)

These are part of the "reasonable and necessary expenses" Debtor states to show having $1,663.00 a month in projected disposable income to fund the Plan.

Debtor's confirmed Amended Plan requires monthly Plan payments of $1,650.00. Dckt. 25 at 7. The Plan provides for a 0.00% dividend for creditors with general unsecured claims, that there are no priority unsecured claims, and Debtor is surrendering a 2010 Chevrolet Malibu that is collateral for a Class 3 Claim.

The only creditor projected to receive a distribution from the Trustee is the creditor having a claim secured by Debtor's residence – the current monthly payment of $1,056.24 and the $317.00 cure payment for curing a pre-petition arrearage stated to be ($19,000.00). *Id*. at 7. On Proof of Claim 1-1, the creditor lists the pre-petition arrearage to be ($14,177.47).

In addition to Debtor's expenses appearing to be questionable, it appears that Debtor cannot have the ability to cure defaults under the Plan. Debtor does not provide any evidence of having sufficient income to make a multi-month payment in one month.

At the hearing **xxxxxxx**

Therefore, in light of the foregoing, the Motion is ~~denied, and the order Dismissing this Case (Dckt. xx) is vacated.~~

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Vacate filed by Jerry William Jors ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> ~~**IT IS ORDERED** that the Motion is denied, and the Order Dismissing this Case (Dckt. xx) is vacated.~~

6. **19-26243-E-13 PGM-2** | **RICHARD/ANGELA PARRISH** **Peter Macaluso** | **MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTORS ATTORNEY(S) 4-15-21 [109]**

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

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 Debtors, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 15, 2021. By the court's calculation, 40 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00).

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

The Motion for Allowance of Professional Fees is granted.

Peter G. Macaluso, the Attorney ("Applicant") for Richard Craig Parrish and Angela Parrish, the Debtor ("Client"), makes a Request for Additional Allowance of Fees and Expenses in this case.

Fees are requested for the period February 12, 2021, through April 12, 2021. Applicant requests reduced fees in the amount of $1,500.00 and costs in the amount of $0.00.

APPLICABLE LAW

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

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

Further, the court shall not allow compensation for,

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

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

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Reasonable Billing Judgment

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

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

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

A review of the application shows that Applicant's for the Estate include addressing Trustee's Motion to Dismiss, preparing Modified Plan, and sending order confirming plan to Trustee. The court finds the services were beneficial to Client and the Estate and were reasonable.

"No-Look" Fees

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

> (a) Compensation. Compensation paid to attorneys for the representation of chapter 13 debtors shall be determined according to Subpart (c) of this Local Bankruptcy

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

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed $4,000.00 in attorneys' fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 108. Applicant prepared the order confirming the Plan.

Lodestar Analysis

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

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

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Motion to Dismiss: Applicant spent 2.1 hours in this category. Applicant reviewed case as to work done by prior attorney, review Motion to Dismiss and pay history, met with clients to discuss Motion to Dismiss, and appeared at the hearing on the motion.

Motion to Modify: Applicant spent 3.7 hours in this category. Applicant prepared and filed Motion to Modify, prepared and filed Opposition to Motion to Dismiss, prepared and filed Amended Schedules and Declaration, received and reviewed Trustee's Opposition to Motion to Modify, prepared and filed Response to Opposition to Motion to Modify, and appeared for hearing on the motion.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Peter G. Macaluso	5.40	$300.00	$1,620.00
	0.40	$75.00	$30.00
Total Fees for Period of Application			$1,650.00

Costs and Expenses

Applicant does not seek allowance of costs through this application.

FEES AND COSTS & EXPENSES ALLOWED

Fees

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

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

Fees	$1,500.00
Costs and Expenses	$0.00

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Peter G. Macaluso ("Applicant"), Attorney having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Peter G. Macaluso is allowed the following fees and expenses as a professional of the Estate:
>
> Peter G. Macaluso, Professional Employed by Richard Craig Parrish and Angela Dale Parrish ("Debtor")
>
> Fees in the amount of $1,500.00
> Expenses in the amount of $0.00,
>
> as the allowance of additional fees and expenses determined in accordance with the provisions of 11 U.S.C. § 330 as counsel for Debtor.
>
> **IT IS FURTHER ORDERED** that David Cusick ("the Chapter 13 Trustee") is authorized to pay the fees allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

7. **21-21646-E-13 MJD-1** **SUSAN DEAN** **Matthew DeCaminada** **MOTION TO EXTEND AUTOMATIC STAY** **5-6-21 [10]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 6, 2021. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

The Motion to Extend the Automatic Stay is granted.

Susan Marie Dean ("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. 19-24307) was dismissed on March 3, 2021, after Debtor became delinquent in plan payments. *See* Order, Bankr. E.D. Cal. No. 19-24307, Dckt. 59, March 3, 2021. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because she was impacted by COVID-19 and she was not was not consistently receiving support payments and after speaking with her attorney, Debtor decided it was better to let that previous case be dismissed and then file a new case.

Trustee does not oppose the relief requested. Dckt. 19.

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

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

A. Why was the previous plan filed?

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

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

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

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 Susan Marie Dean ("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.

8. **21-21153-E-13 MEV-1** | **REHANA HARBORTH** **Marc Voisenat** | **MOTION TO CONVERT CASE FROM CHAPTER 13 TO CHAPTER 11** **5-5-21 [23]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 5, 2021. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

The Motion to Convert 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 Convert the Chapter 13 Bankruptcy Case to a Case under Chapter 11 is xxxxx.

This Motion to Convert the Chapter 13 bankruptcy case to one under Chapter 11 has been filed by Rehana Harborth, the Chapter 13 Debtor ("Debtor"). Movant asserts that the case should be converted based on the following grounds:

A. Debtor cannot propose a feasible plan to pay off the mortgage arrears within five years of the petition date.

B. In this case, the total amount of the mortgage arrears that need to be cured is approximately $293,000.00.

C. To fund a chapter 13 plan to pay this creditor alone would amount to approximately $4,883.33 a month plus the chapter 13 trustee fee of $488.00 for an approximate total of $5,371.33 a month in addition to the chapter 13

trustee's fee for ongoing post-petition mortgage payments to the first lien holder.

D. Debtor cannot propose a feasible plan that funds within 5 years of the petition date.

CREDITOR'S OPPOSITION

Creditor Wilmington, holding a secured claim ("Creditor"), filed an Opposition on May 7, 2021. Dckt. 27. Creditor argues that Debtor's case should not be converted on the basis that:

1. Debtor did not file in good faith where Debtor knows she has not paid Creditor for eight years and yet failed to include Creditor's arrearage in her Plan.

2. Debtor only sought to convert after Creditor filed a proof of claim and objected to the Plan.

3. Debtor knows she is unable to propose a confirmable Chapter 11 plan, and should have never filed a Chapter 13 where there is significant pre-petition arrearage and she does not have sufficient income to cure said arrearage.

4. Debtor will not be able to propose a confirmable Chapter 11 plan because Debtor is unable to show, by preponderance of the evidence, that confirmation will not be followed by liquidation or the need for further reorganization. Debtor cannot modify Creditor's claim and is required to cure all of the pre-petition arrearage within reasonable time and continue making post-petition mortgage payments.

5. Five years is sufficient time to cure the arrearage, yet Debtor fails to mention how much time she needs to cure the default where she states that she cannot pay off the claim in the five years of a Chapter 13 plan.

6. After reviewing debtor's financial information and taking into the account the amount to be cured, proposing to cure Creditor's arrearage over more than ten (10) years is unreasonable and would not be acceptable to Creditor in a Chapter 11.

7. Based on Debtor's income, Debtor is unable to propose a feasible Chapter 11 Plan that would pay Creditor's arrears over a reasonable period of time, as well as the claims of other creditors.

TRUSTEE'S NON-OPPOSITION

Trustee filed a Non-Opposition on May 17, 2021. Dckt. 30. Trustee does not oppose the conversion but notes for the court that Creditor Wilmington Savings Fund Society, servicer FCI Lender Services, Inc. is included in the pending plan but it does not provide for the pre-petition arrearage; and Trustee has not made any disbursements to Creditor.

APPLICABLE LAW

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

> Except as provided in subsection (f) of ths section, at any time before the confirmation of a plan under section 1325 of this title, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 11 or 12 of this title.

11 U.S.C. § 1307(d). The court has discretion to deny a motion to convert the case to chapter 11 or chapter 12. 8 Collier on Bankruptcy P 1307.05 (16th 2021). Thus, for example, a court may deny a conversion motion if the court does not believe a plan under the desired chapter can be effectuated. *Anderson v. U.S. on Behalf of Small Business Administration*, 165 B.R. 445 (S.D. Ind. 1994).

The court engages in a "totality of circumstances" test, weighing facts on a case-by-case basis and determining whether cause exists, and if so, whether conversion or dismissal is proper. *Drummond v. Welsh (In re Welsh)*, 711 F.3d 1120, 1123 (9th Cir. 2013) (citing *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219 (9th Cir. 1999)). Bad faith is one of the enumerated "for cause" grounds under 11 U.S.C. § 1307. *Nady v. DeFrantz (In re DeFrantz)*, 454 B.R. 108, 112 n.4 (B.A.P. 9th Cir. 2011) (citing *In re Leavitt*, 171 F.3d at 1224).

DISCUSSION

Debtor is requesting to convert this Chapter 13 case to a Chapter 11 case. Debtor explains that she is unable to address her debt through a Chapter 13 plan because the amounts owed are too high. Specifically, the amount which makes this "unfortunate turn of events" is that of Creditor Wilmington, creditor with a secured claim secured by Debtor's primary residence. Creditor has informed this court that Debtor has not made a payment on her mortgage in eight years. Thus, the court can fairly conclude that Debtor was very much aware of this debt prior to the filing of the instant case and yet chose to file the case and more egregiously purposely failed to list Creditor's claim. This shows bad faith in the part of Debtor.

In allowing the court discretion to convert a case, the court looks to whether cause exists for conversion. Conversion to a Chapter 11 case would still require Debtor to file a confirmable Chapter 11 plan. Section 1123 of the bankruptcy code states that a plan may not modify the rights of holders of a secured claim secured only be a security interest in real property that is the debtor's principal residence.

Here, Debtor has failed to inform the court of what kind of Chapter 11 plan she would propose where Debtor must cure all of the pre-petition arrearage given her disposable income and Creditor has already stated that they will not support a plan that may take 10 years for debtor to pay off Creditor's pre-petition arrearage. Under the current circumstances, it seems that Debtor would be unable to propose a feasible plan whether it is under Chapter 13 or Chapter 11.

A review of the court's files does not disclose any prior or other cases filed by Debtor. This does not appear to be a situation where Debtor has "shopped" various bankruptcy cases in the District. Creditor seems anxious to have this case dismissed and Debtor file a new Chapter 11 case in which the property securing Creditor's claim would be property of the bankruptcy estate protected by the automatic stay even if the Debtor did not get the stay extended as to the Debtor as provided in 11 U.S.C. § 362(d)(3)(B).

On Schedule A Debtor lists the Las Pasas Way Property, Creditor's collateral, as having a value of $600.000. Dckt. 11 at 3. On Schedule D Debtor lists the Las Pasas Way Property being encumbered by a Deed of Trust to secure an obligation of ($535,000). This is consistent with Creditor's claim filed as a $537,492.30 secured claim. Proof of Claim 3-1. The pre-petition arrearage to be cured as stated in Proof of Claim 3-1 is ($292,957.78).

On Schedule I Debtor states that Debtor is "employed," but does not list the name of an employer. Dckt. 11 at 24. Debtor lists having $5,050.00 net monthly income from rental property or operating a business. *Id*., ¶ 8.a. However, the court could not locate the required stating of gross receipts and expenses for such a business or rental. *Id*.

Debtor states also having $1,200.00 a month income from a pension, $3,020.00 from Doordash, $800 from Foodjets, and $500 from School cleaning. This total $9,370.00 in monthly income. In addition, Debtor states that his nephew contributes $600.00 a month to the household.

Debtor computes having monthly income, before an income and employment taxes, to be $11,170.00.

On Schedule J Debtor states having no dependents and having ($6,575.00) in reasonable and necessary monthly expenses. These include the following of note:

Residential Mortgage.....($2,187.00)
Property Taxes.....($ 300.00)
Homeowner's Insurance.....($ 125.00)

Home Maintenance and Repairs....($ 0.00)

It is not reasonable to believe that there are no maintenance or repair expenses on Debtor's residence during the term of a bankruptcy plan.

Water, Sewage, Garbage.....($ 0.00)

It is not clear why Debtor has no water, sewage, or garbage expenses.

Clothing/Laundry.....($ 0.00)

During the five years of a Chapter 13 Plan, or longer in a Chapter 11, it is not reasonable for the Debtor to not purchase any clothing or do any laundry.

Personal Care.....($ 0.00)

Debtor not having any hair cuts or other personal care needs during the five or more years of a bankruptcy plan is not reasonable.

Transportation (Fuel, Repairs,
Maintenance, Registration).....($ 0.00)

Debtor has at least one vehicle, makes monthly payments on a vehicle, and pays insurance on this vehicle. It is not reasonable that there are not fuel, maintenance, repair, and other expenses relating to transportation during five or more years of a bankruptcy plan.

Car Payment Vehicle 1.....($ 260.00)

Federal Income Tax on $126,840
Annual Income (Excluding
Nephew's Contribution).....($ 0.00)

Self-Employment Tax on $126,840
Annual Income (Excluding
Nephew's Contribution).....($ 0.00)

State Income Tax on $126,840
Annual Income (Excluding
Nephew's Contribution).....($ 0.00)

Debtor reports having substantial business and self-employment income, but does not explain why the more than $100,000 a year in income is tax free.

Installment or Lease Payments

SLS-Azevedo.....($ 510.00)

PNC- Ivytown.....($1,050.00)

Ivytown HOA.....($l 348.00)

The Azevedo property is listed as a single family home owned by Debtor with at least one other person as tenants in common. Debtor states her interest has a value of $160,000, which is half of the $320,000 which Debtor states is the value of the property. Schedule A/B, Dckt. 11 at 4. Debtor also lists Ivytown as a condominium that she alone owns with a value of $285,000. *Id*.

It appears that these two properties may be rentals generating Debtor income. However, no expenses are shown for property taxes, insurance, repairs, maintenance, and rental fees.

Using the expenses as stated on Schedule J, Debtor computes having $4,695.00 a month in projected disposable income to fund a plan.

Debtor's Chapter 13 Plan

Debtor's Chapter 13 Plan required a monthly plan payment of $2,895.00 for sixty months. Plan, ¶ 2.01, 20.3; Dckt. 9. The Plan states that Debtor's counsel was paid $0.00 prior to confirmation and his counsel is to be paid $0.00 through the plan – indicating that Debtor's counsel is providing these legal service *pro bono* to Debtor.

The $2,895.00 monthly plan payment provided in the Chapter 13 Plan are to be disbursed through the Chapter 13 Plan as follows:

Plan Payment.....$2,895.00

Ch 13 Trustee Fees of 10%.....($ 289.50)

Class 1 Secured Claim
Creditor's Current Monthly Payment.....($2,188.00)
Arrearage on Creditor's Claim.....($ 0.00)

Class 2 Secured Claims

Charles Schwab.....($ 416.67)

Class 3 Secured Claims.....None

Class 4 Secured Claims
to be paid Directly by Debtor

Ivytown Consortium LLC.....($ 348.00)

PNC Bank Ivytown Secured Claim.....($1,006.00)

Hyundai Secured Loan.....($ 311.00)

SLS Azevedo Secured Claim.....($ 510.00)

Class 7 Unsecured Claims
0.00% on ($119,897.00).....($ 0.00)

Total of Plan Payment Over/(Under) Distributions.....$ 0.83

First, the court notes that on Schedule J Debtor states that she has a monthly expense of ($2,187.00) to pay Creditor's current monthly mortgage payment in computing that she has $4,695.00 in projected disposable income to fund a Plan. Debtor then carefully only provides $2,895.00 to fund the plan (just 61.6% of the projected disposable income). This would result in Debtor slipping $1,800 a month, or $108,000 over the sixty months of the plan, away from his creditors and into his own pocket.

However, Debtor then slipped into the plan payment of Creditor's current monthly payment of $2,188, already included in Schedule J in computing projected disposable income, into being paid through

the plan, letting Debtor slip the $2,187.00 for the current monthly payment provided for on Schedule J into her own pocket and away from creditors. Over sixty months of the Plan, this is an additional $131,220 diverted from creditor claims into Debtor's pocket.

As proposed, the Chapter 13 Plan would be a vehicle for Debtor and Debtor's counsel to divert $239,220 away from paying creditors and into Debtor's pocket, which leaving at least ($119,897) (based on Debtor's statement in ¶ 3.14 for Class 7 claims in the Plan) going completely unpaid.

In looking at Debtor's declaration, Debtor makes some perfunctory statements about filing bankruptcy and not yet having confirmed a Chapter 13 Plan. Dckt. 25. Debtor then mentions having a $293,000.00 arrearage to cure, which was not provided for in the proposed Plan and how Debtor computes needing to fund a plan with $5,371.33 a month. Debtor neglects in her short testimony to discuss how this is computed.

The court being curious of how Debtor could fund a plan in this case, Creditor now having raised the issue of the substantial, many years arrearage, has prepared the chart below:

Debtor's Projected Disposable Income From Schedule J (Includes the $2,188 for Creditor's Current Monthly Payment That is to be Paid Through the Plan)	$6,882.00
Chapter 13 Trustee Fees - 10%	($688.20)
Class 1 Claims	
Creditor Current Monthly Mortgage Payment	($2,188.00)
($292,957.78) Arrearage Cure on Creditor's Claim, Amortized Over 60 Months	($4,883.00)
Class 2 Claims	
Charles Schwab	($416.67)
Monies For Unsecured Claims/Under Funded Monthly	($1,293.87)

Thus, it does not appear that Debtor could fund a Chapter 13 Plan, even using what appear to be "creative" expenses listed on Schedule J.

That leaves the court, Creditor, and other parties in interest with the sixty-four thousand dollar question - should this case be converted to Chapter 11, or should it be dismissed and then Debtor commence a new Chapter 11 case.

At the hearing, **XXXXXXX**

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 Convert the Chapter 13 case filed by Rehana Harborth ("the Chapter 13 Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Convert is **XXXXXXX** .

9.	**21-20971-E-13 PPR-1**	**RONALD/SABRINA ABERCROMBIE Mohammad Mokarram**	**OBJECTION TO CONFIRMATION OF PLAN BY ON Q FINANCIAL, INC. 4-5-21 [14]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtors, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on April 5, 2021. By the court's calculation, 50 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.

On Q Financial Inc., its assignees and/or successors in interest ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

A. The Plan incorrectly lists Creditor's claim as a Class 4 when it should be listed as a Class 1 claim.

B. The Plan is not adequately funded.

DISCUSSION

Creditor's objections are well-taken.

Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts $15,000.00 in pre-petition arrearage. Proof of Claim 8-1. The Plan

does not propose to cure those arrearage. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearage.

Feasibility

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Creditor argues that because Debtor does not account for the approximately $15,000 in arrearage, the plan is not adequately funded. Thus, Debtor's plan is not feasible. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

At the hearing, Debtor's counsel addressed the arrearage, **xxxxxxx**

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by On Q Financial Inc., its assignees and/or successors in interest ("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.

10. **21-20775-E-13 PSB-2** **JOSEPH/MARTHA ESPANA** **Paul Bains** **MOTION TO CONFIRM PLAN** **4-2-21 [27]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 2, 2021. By the court's calculation, 53 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Plan is denied.

The debtors, Joseph Humberto Espana and Martha Eugenia Espana ("Debtor") seek confirmation of the Chapter 13 Plan. The Plan provides for payments of $6,520.00 for 60 months and a 100% dividend to unsecured claims totaling $20,392.00. Plan, Dckt. 30. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on May 5, 2021. Dckt. 37. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor are delinquent under the proposed plan.

B. Debtor are over the median income.

C. Trustee was wrongly selected as the Trustee for this case.

CREDITOR'S OPPOSITION

JPMorgan Chase Bank, N.A. ("Creditor") holding a secured claim filed an Opposition on May 18, 2021. Dckt. 47. Creditor opposes confirmation of the Plan on the basis that the Plan fails to provide for Creditor's arrearage.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is $6,554.66 delinquent in plan payments, which represents one month of the $6,554.66 plan payment. According to the Chapter 13 Trustee, the Plan in § 2.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor filed a Response on May 13, 2021 stating that there was a mistake that caused the payment to be delayed but that as of May 11, 2021 Trustee should have received the plan payment. Dckt. 42.

Not Best Effort

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

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

According to Trustee, Debtor are over the median income. Debtor's Form 122C-1 indicates monthly income for the year is $83,886.84, which puts them above median income, currently at $82,418.00. Although Form 122C-2 shows Debtor are negative $476.22 after deductions, including the mortgages for all three rentals, the income associated with those properties have not been taken into consideration. If $5,500.00 additional net rental income, as listed as net income on Schedule I, (Page 3, #8a), is factored into the calculations, it appears the means test would indicate that Debtors may be positive by almost $5,000.00 each month.

Debtor filed a Response on May 12, 2021 stating that amended Forms 122C-1 & Form 122C-2 have been filed showing the income for rent for all three properties. Dckt. 40. Debtor has also filed amended Schedules I and J to clarify that the total projected rental income prior to expenses is $6,600 rather than the $5,300, which was simply a miscalculation on the amended Schedules filed on April 27, 2021 (DN 36); the rental expenses are listed correctly at $3,337; resulting in a net rental income of $2,827.

Finally, Debtor argues that their net income, as reflected in the Amended Schedule J that was to be filed concurrently with their response, is $7,914.86. However, Debtor asserts that when social security income is "backed out," the net income becomes $5,029.86.

Wrong Venue

Trustee asserts that the case was may have been improperly assigned to David P. Cusick, Chapter 13 Trustee, by the Clerk of the Court. According to Trustee, the petition indicates that Debtor live in Contra Costa County; but chose to file in the Eastern District because their principal assets are in this jurisdiction: three rental properties, of which, two are in Stockton, California and one is in Fresno, California. Thus, the case should have been assigned to the Chapter 13 Trustee who administers cases for the Modesto or Fresno Divisions. Trustee notes willingness to continue with the administration so as to avoid confusion to Debtor and creditors.

Debtor appreciates Trustee's willingness to administer the case as to avoid confusion. Dckt. 40.

Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor's commercial property in Stockton. Creditor has filed a timely proof of claim in which it asserts $27,898.01 in pre-petition arrearage. The Plan does not propose to cure those arrearage. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearage.

At the hearing Debtor's counsel addressed the arrearage issue, **xxxxxxx**

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

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

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

~~The Motion to Confirm the Chapter 13 Plan filed by the debtors, Joseph Humberto Espana and Martha Eugenia Espana ("Debtor"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

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

11. 21-21282-E-13 MOH-1 — CYNTHIA/JOHN PERKINS — Michael Hays — MOTION TO VALUE COLLATERAL OF CREDIT ACCEPTANCE CORPORATION — 5-11-21 [16]

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the 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, Creditor, and Office of the United States Trustee on May 11, 2021. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Credit Acceptance Corporation ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $5,913.00.

The Motion filed by Cynthia Denise Perkins and John Wendel Perkins ("Debtors") to value the secured claim of Credit Acceptance Corporation ("Creditor"). Debtor is the owner of a 2016 Nissan Versa ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $5,913.00 as of the petition filing date.

The Motion is accompanied by the Declaration of Clancy Callahan who authenticates the Kelley Blue Book valuation report for the Vehicle that secures Creditor's Claim. Dckt. 19. Debtor also provided a copy of the NADA Valuation Report for the Vehicle. The Report has been properly authenticated and is accepted as a market report or commercial publication generally relied on by the public or by persons in the automobile sale business. FED. R. EVID. 803(17).

Trustee does not oppose the relief requested and notes that although Creditor is included in the Plan, Trustee has not made any disbursements to Creditor. Dckt. 22.

DISCUSSION

It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). As part of its burden of producing substantial evidence to rebut the presumptive validity, the objecting party bears the burden of producing substantial evidence as to the value of the collateral securing any portion of the claim. *In re Austin,* 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *Id.* Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

While Proof of Claim No. 1 is prima facie evidence of a claim, the Creditor has the actual burden of proof on the claim if that prima facie evidence is rebutted. It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the *prima facie* validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

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

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

Proof of Claim No. 1 in which it is asserted that the claim is a secured claim in the amount of $6,869.00 is based upon that amount being stated in the Proof of Claim. The Proof of Claim is signed by Alicia Ford, no title or role within the organization is provided as to this person. As opposed to the books and records of Credit Acceptance in which the amount of the debt and the various transactions are maintained, there is nothing to indicate a high probative value as to the statement of the value of this five year old model 2016 Nissan Versa.

Here, Debtor has filed a properly authenticated copy of the Kelley Blue Book valuation for debtor's Vehicle. Exhibit 2, Dckt. 18; *see also* Dckt. 19. The report values the vehicle at $5,913.00. *Id.*

The lien on the Vehicle's title secures a purchase-money loan incurred on January 13, 2018, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $9,068.53. Proof of Claim, No. 1-1. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of $5,913.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Collateral and Secured Claim filed by Cynthia Denise Perkins and John Wendel Perkins ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Credit Acceptance Corporation ("Creditor") secured by an asset described as 2016 Nissan Versa four door S sedan 4 cylinder ("Vehicle") is determined to be a secured claim in the amount of $5,913.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $5,913.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

12. **21-20890-E-13 KMM-1** **HAYDEN/MANDY COIT** **Mikalah Liviakis** **OBJECTION TO CONFIRMATION OF PLAN BY WILMINGTON TRUST, NATIONAL ASSOCIATION** **3-31-21 [21]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtors, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on March 31, 2021. By the court's calculation, 55 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.

Wilmington Trust, National Association, as Successor Indenture Trustee to Citibank, N.A., as Indenture Trustee of SACO I Trust 2006-12, Mortgage-Backed Notes, Series 2006-12, as serviced by Specialized Loan Servicing, LLC ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

A. Plan fails to provide for Creditor's claim.

B. Debtor's Plan is not feasible.

DISCUSSION

Failure to Provide for a Secured Claim

Creditor asserts a claim of $113,519.72 in this case. Debtor's Schedule D does not list Creditor's claim. The Plan does not provide for treatment of this claim. According to Creditor, the Note of Secured Creditor's claim is due to mature on August 15, 2021, during the life of the Plan.

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

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

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

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

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

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

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

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

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

Notwithstanding the absence of a requirement in 11 U.S.C. § 1322(a) that a plan provide for a secured claim, the fact that this Plan does not provide for respondent Creditor's secured claim raises doubts about the Plan's feasibility. *See* 11 U.S.C. § 1325(a)(6). That is reason to sustain the Objection.

Feasibility

Thus, Creditor argues Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). According to the Plan, Debtor will make monthly payments of $2,900.00 for months 1 to 12, followed by monthly payments of $3,800.00 for months 13 to 60. Creditor notes that, according to Debtor's Schedules, Debtor have a monthly net income of only $2,901.05. Thus, Creditor argues, Debtor does not have sufficient income to fund the plan after accounting for Creditor's claim. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by Wilmington Trust, National Association, as Successor Indenture Trustee to Citibank, N.A., as Indenture Trustee of SACO I Trust 2006-12, Mortgage-Backed Notes, Series 2006-12, as serviced by Specialized Loan Servicing, LLC ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

13. **21-20894-E-13 DPC-1** **ELISEI BRANDUSA** **Gary Fraley** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK** **4-28-21 [16]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, and Debtor's Attorney on April 28, 2021. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. The Plan may not be Debtor's best effort.

B. Debtor may not have filed the case in good faith.

C. Trustee is uncertain that Debtor can afford plan payments.

DISCUSSION

Trustee's objections are well-taken.

Not Best Effort

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

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

The Plan proposes to pay a nine (9) percent dividend to unsecured claims, which total $25,514.26, though Debtor lists $1,100 per month for tax, medicare and social security deductions totaling $13,200 a year, where the 2019 W-2 provided reflects $10,462.91 for the year, a $2,737.09 difference, or $228.09 per month.

Moreover, Debtor has provided the Trustee pay advises which show a varying deduction for "401(k)" on bi-weekly paystubs from $124.42 on the pay advise dated September 4, 2020, to $147.19 on the pay advise dated February 19, 2021. Trustee is uncertain as to what the 401(k) deduction is, when it will end, and where Schedule I shows no voluntary deduction, the Debtor appears able to increase the plan payment by about $260.00 when the "401(k)" contribution ceases.

Good-Faith Filing

Trustee alleges that the Plan was not filed in good faith. *See* 11 U.S.C. § 1325(a)(3). Good faith depends on the totality of the circumstances. *In re Warren*, 89 B.R. 87 (9th Cir. BAP 1988). Thus, the Plan may not be confirmed. Factors to be considered in determining good faith include, but are not limited to:

1) The amount of the proposed payments and the amounts of the debtor's surplus;

2) The debtor's employment history, ability to earn, and likelihood of future increases in income;

3) The probable or expected duration of the plan;

4) The accuracy of the plan's statements of the debts, expenses and percentage of repayment of unsecured debt, and whether any inaccuracies are an attempt to mislead the court;

5) The extent of preferential treatment between classes of creditors;

6) The extent to which secured claims are modified;

7) The type of debt sought to be discharged, and whether any such debt is nondischargeable in Chapter 7;

8) The existence of special circumstances such as inordinate medical expenses;

9) The frequency with which the debtor has sought relief under the Bankruptcy code;

10) The motivation and sincerity of the debtor in seeking Chapter 13 relief; and

11) The burden which the plan's administration would place upon the trustee.

In re Warren, 89 B.R. 87, 93 (B.A.P. 9th Cir. 1988) (quoting *In re Brock*, 47 B.R. 167, 169 (Bankr. S.D. Cal. 1985) (emphasis added).

Here, Debtor purchased a 2019 Toyota Camry with a $4,000 cash down payment on February 25, 2021, after consulting with and paying bankruptcy counsel $4,000 cash on February 12, 2021. Debtor filed the petition March 12, 2021. Thus, Debtor purchased this relatively new vehicle within weeks of seeking the protection of this bankruptcy case.

Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Trustee has reviewed the pay advise dated 2-19-2021 which shows overtime of $573.17 and regular pay of $1,880.00, not all of the pay advises the Trustee has received are legible, and the Trustee believes the overtime is still less than projected. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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

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

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

14. **18-27796-E-13 MS-2** | **MOHAMMAD/NEJMAH MAHMOUD** **Mark Shmorgon** | **MOTION TO MODIFY PLAN 4-19-21 [51]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 19, 2021. By the court's calculation, 36 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 debtors, Mohammad Mahmoud and Nejmah Mahmoud ("Debtor") seek confirmation of the Modified Plan to cure their delinquency after experiencing material financial hardship due to the COVID-19 pandemic and resume regular monthly payments. Declaration, Dckt. 54. The Modified Plan provides payments of $1,900.00 for months 29-72, and a zero (0) percent dividend to unsecured claims. Modified Plan, Dckt. 53. 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 May 11, 2021. Dckt. 57. Trustee opposes confirmation of the Plan on the basis that:

A. The Plan exceeds the maximum amount of time allowed under the Bankruptcy Code.

B. Debtor fails to specify the specific months of post-petition mortgage arrearage.

DISCUSSION

Failure to Complete Plan Within Allotted Time

Debtor is in material default under the Plan because the Plan will complete in more than the 72 months proposed. According to the Chapter 13 Trustee, the Plan will complete in 77 months due to Debtor's proposing to pay a total of $83,600.00, which after paying trustee's fees leaves $79,191.69 for creditors, where $80,888.85 is needed. Debtor's would need to increase their plan payment from $1,900.00 to $1,945.00 per month over the remaining 44 months to be feasible with 0% to unsecured creditors. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Post-Petition Arrearage

The plan calls for post-petition mortgage arrears to be cured at the rate of $65.22 and a mortgage post-petition supplemental claim to be paid at the rate of $20.45 per month without indicating the specific months in arrears. Trustee notes that the arrears appear to be $2,902.94 where the Trustee made two mortgage payments for the Debtor in January 2021, but underpaid them by $33.32.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by the debtors, Mohammad Mahmoud and Nejmah Mahmoud ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion to Confirm the Modified Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

15. 20-25296-E-13 DRE-1 — LESSLIE/MARANDA SPARKS — Randall Ensminger — MOTION TO CONFIRM PLAN — 3-31-21 [34]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on March 30, 2021. By the court's calculation, 56 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is xxxxx.

The debtors, Lesslie Dean Sparks and Maranda Dawn Sparks ("Debtors"), seek confirmation of the Amended Plan. The Amended Plan provides for payments of $2,466.00 per month for four months followed by payments of $2,675.00 for 56 months, and two percent dividend to creditors with unsecured claims totaling $25,557.00. Amended Plan, Dckt. 35. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on April 26, 2021. Dckt. 42. Trustee opposes confirmation of the Plan on the basis that:

A. Trustee has not yet received Debtor's April payment.

B. Trustee is uncertain of Debtor's ability to pay.

DISCUSSION

Ability to Pay

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor filed supplemental Schedule I & J showing rent from a roommate and improvement in some of the matters the Trustee raised under the previous objection, (food, home repair), but no explanation appears in Debtor's declaration as to the roommate to show Debtor is receiving this income and it is likely to continue. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Trustee filed a Status Report informing the court that Debtor are delinquent in plan payments in the amount of $2,259.72 and Debtor has yet to file a Declaration regarding income from a roommate and whether it will continue.

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

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by the debtors, Lesslie Dean Sparks and Maranda Dawn Sparks ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Confirm the Amended Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

25. 20-22237-E-13 MC-3 COLETHA BROWNING MOTION TO INCUR DEBT O.S.T. 5-11-21 [34]

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)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 11, 2021. By the court's calculation, 14 days' notice was provided. The court set the hearing for May 25, 2021. Dckt. 44.

The Motion to Incur Debt was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing ----------.

The Motion to Incur Debt is granted.

Coletha Elizabeth Browning ("Debtor") seeks permission to purchase real property commonly known as 3301 N. Park Dr. #1614, Sacramento, California, with a total purchase price of $350,000 and monthly payments of $2,406.00 to Joanna Johnson (seller extending credit to Debtor) over 30 years with a 4.00% fixed interest rate.

The Trustee does not oppose the purchase but notes that Debtor's declaration states the daughter will be contributing $300.00 a month, whereas the supplemental Schedule I indicates a monthly contribution of $250. At the hearing Counsel for Debtor clarified xxxxxxxx

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." FED. R. BANKR. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the Motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Incur Debt filed by Coletha Elizabeth Browning ("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 Coletha Elizabeth Browning is authorized to incur debt pursuant to the terms of the agreement, Exhibits A & B, Dckt. 38.~~

26. 20-22237-E-13 MC-5 COLETHA BROWNING MOTION TO EMPLOY WELCOME HOMES AS BROKER(S) O.S.T. 5-13-21 [49]

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)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 13, 2021. By the court's calculation, 12 days' notice was provided. The court set the hearing for May 25, 2021. Dckt. 54.

The Motion to Employ 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 Employ is granted.

Coletha Elizabeth Browning ("Debtor") seeks to employ Joanna Johnson doing business as Welcome Homes ("Broker") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Debtor seeks the employment of Broker to assist Debtor in purchasing real property commonly known as 3301 N. Park Drive, Unit 1614, Sacramento, California ("Property").

Debtor argues that Broker's appointment and retention is necessary to assist her in the process of purchasing the property and Broker will not take a commission for the sale and purchase which is to the benefit of Debtor and creditors in interest.

Joanna Johnson, a broker doing business as Welcome Homes, testifies that she will act as debtor's real estate broker for the purpose of purchasing the Property. Joanna Johnson testifies she does not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor (except as landlord/tenant), creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

Pursuant to § 327(a), a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

Taking into account all of the relevant factors in connection with the employment and compensation of Broker, considering the declaration demonstrating that Broker does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Welcome Homes as Broker for the Chapter 13 Estate on the terms and conditions set forth in the Residential Purchase Agreement and Joint Escrow Instructions filed as Exhibit A, Dckt. 52.

Broker, as the Seller of the Property, has testified under penalty of perjury that she will not be receiving any commission or fees for her service as the real estate broker in this transaction.

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 Employ filed by Coletha Elizabeth Browning ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Employ is granted, and Debtor is authorized to employ Welcome Homes as Broker for Debtor on the terms and conditions as set forth in the Residential Purchase Agreement and Joint Escrow Instructions filed as Exhibit A, Dckt. 52.
>
> **IT IS FURTHER ORDERED** that no compensation is permitted except Welcome Homes and any of its agents for the services provided to Debtor.

FINAL RULINGS

16.	**16-22801-E-13** **MJD-4**	**ANTHONY/VICKI BEAVER** **Matthew DeCaminada**	**MOTION FOR COMPENSATION BY THE LAW OFFICE OF STUTZ LAW OFFICE, P.C. FOR MATTHEW J. DECAMINADA, DEBTORS ATTORNEY(S)** **4-19-21 [102]**

Final Ruling: No appearance at the May 25, 2021 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 Debtors, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 19, 2021. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Stutz Law Office, P.C., the Attorney ("Applicant") for Anthony Ray Beaver and Vicki Siphone Beaver, the Chapter 13 Debtor ("Client"), makes a Request for the Additional Allowance of Fees and Expenses in this case.

Fees are requested for the period January 27, 2021, through April 19, 2021. Applicant requests fees in the amount of $1,500.00 and costs in the amount of $0.00.

APPLICABLE LAW

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

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

Further, the court shall not allow compensation for,

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

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

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Reasonable Billing Judgment

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

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

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

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

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

A review of the application shows that Applicant's for the Estate include discussing Trustee's Motion to Dismiss, filing a Modified Plan, and communicating with clients to maintain the case. The court finds the services were beneficial to Client and the Estate and were reasonable.

"No-Look" Fees

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

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

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed $4,000.00 in attorneys' fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 113. Applicant prepared the order confirming the Plan.

Lodestar Analysis

If Applicant believes that there has been substantial and unanticipated legal services that have been provided, then such additional fees may be requested as provided in Local Bankruptcy Rule 2016-

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

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

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Motion to Dismiss: Applicant spent 0.9 hours in this category. Applicant met with Debtors to discuss the trustee's Motion to Dismiss.

Motion to Modify: Applicant spent 5.30 hours in this category. Applicant prepared, filed, and served a third modified Chapter 13 plan along with a motion to confirm said plan; and subsequent correspondence and meetings with the clients to maintain the case.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Matthew Decaminada	6.2	$250.00	$1,550.00
Total Fees for Period of Application			$1,550.00

Costs and Expenses

Applicant does not seek the allowance and recovery of costs through this application.

FEES AND COSTS & EXPENSES ALLOWED

Fees

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

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

Fees	$1,500.00
Costs and Expenses	$0.00

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Stutz Law Office, P.C. ("Applicant"), Attorney having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Stutz Law Office, P.C. is allowed the following fees and expenses as a professional of the Estate:
>
> Stutz Law Office, P.C., Professional Employed by Anthony Ray Beaver, Sr. and Vicki Siphone Beaver ("Debtor")
>
> Fees in the amount of $1,500.00
> Expenses in the amount of $0.00,
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for Debtor.
>
> **IT IS FURTHER ORDERED** that David Cusick ("the Chapter 13 Trustee") is authorized to pay the fees allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

17. **20-21910-E-13** **TIMOTHY TROCKE** **CONTINUED MOTION TO CONFIRM PLAN**
FF-6 **Gary Fraley** **12-17-20 [149]**

Final Ruling: No appearance at the May 25, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on December 17, 2020. By the court's calculation, 47 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy 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 hearing on the Motion to Confirm Plan is continued to 2:00 p.m. on June 29, 2021, the court not having yet issued the final ruling on the Objection to Claim that has been taken under submission.

The court apologizes to the Parties for any inconvenience that the extended time in issuing the Ruling, including the post-final hearing pleadings filed, causes the parties and counsel.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Timothy Tobias Trocke ("Debtor") has provided evidence in support of confirmation.

April 27, 2021 Hearing

The court continues the hearing to 2:00 p.m. on May 25, 2021. The court has taken under submission the Objection to the Claim of Roger Anderson, Trustee, and will issue a decision thereon, after

allowing a reasonable time for the parties to engage in constructive settlement talks in light of what was addressed at the hearing.

Additionally, the Debtor and Chapter 13 Trustee identified several "tweaks" that Debtor may be making to the Plan.

February 2, 2021 Hearing

At the February 2, 2021 hearing, the Parties requested that the hearing be continued in light of the Phase 2 hearings on the Debtor's Objections to the Claim of Roger Anderson, Trustee of the RWA Trust dated March 14, 2014 ("Creditor").

April 20, 2021 Hearing

Debtor seeks confirmation of the Amended Plan. The Amended Plan provides for all net proceeds from the sale of property to be turned over directly to the Chapter 13 Trustee after usual broker fees, escrow costs and closing costs and 100% dividend to unsecured claim totaling $0.00. Amended Plan, Dckt. 151. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

On April 6, 2021 Trustee filed an Amended Response requesting the court take into consideration that Debtor has paid $80,512.03, which $72,297.03 was paid from Chicago Title Company from proceeds of sale of real property, into the Plan and ths Debtor is now current in plan payments. Dckt. 239. Trustee further adds that Debtor has filed a claim objection to Creditor RWA's Amended Claim 2 filed on January 26, 2021 where Creditor increased the claim from $126,635.02 to $180,264.76.

May 25, 2021 Hearing

The hearing is continued in light of the court not having issued the final ruling on the objection to claim that has been taken under submission.

18. **21-21425-E-13 DBJ-1** **DOUGLAS ALEXANDER** **Douglas Jacobs** **MOTION TO DISMISS CASE** **5-11-21 [22]**

Final Ruling: No appearance at the May 25, 2021 hearing is required.

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

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 May 11, 2021. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Dismiss Case 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 Dismiss Case is granted.

The Chapter 13 Debtor, Douglas George Alexander ("Debtor"), seeks dismissal of the case on the basis that he has reached an agreement with his sole creditor and that no creditors will be harmed where his sole creditor will have the right to collect on the debt owed pursuant to California law. Declaration, Dckt. 34.

TRUSTEE'S NON-OPPOSITION

Debtor filed a Non-Opposition on May 17, 2021. Dckt. 26. Trustee does not oppose the dismissal and notes for the court that no § 341 meeting of creditors has been scheduled and that a first payment is not due until May 25, 2021.

DISCUSSION

Debtor seeks dismissal of this case after reaching an agreement with his sole creditor, Sacor Financial. There are no other creditors in this bankruptcy and Debtor seems to have addressed the reason for filing this bankruptcy case.

There being no opposition from Trustee and Debtor having reached an agreement with his sole creditor, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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 Dismiss the Chapter 13 case filed by the Chapter 13 Debtor, Douglas George Alexander ("Debtor"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

19. 21-20745-E-13 EJS-2 — LESLIE COX — Eric Schwab — MOTION TO VALUE COLLATERAL OF ONE MAIN FINANCIAL GROUP LLC — 4-15-21 [27]
19 thru 20

Final Ruling: No appearance at the May 25, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on April 15, 2021. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of One Main Financial Group LLC ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $6,200.

The Motion filed by Leslie Theresa Cox ("Debtor") to value the secured claim of One Main Financial Group LLC ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 29. Debtor is the owner of a 2011 Ford Escape ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $6,200.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's

value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Trustee does not oppose the relief requested and notes that the Plan provides for this claim. Dckt. 32.

DISCUSSION

It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). As part of its burden of producing substantial evidence to rebut the presumptive validity, the objecting party bears the burden of producing substantial evidence as to the value of the collateral securing any portion of the claim. *In re Austin,* 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *Id.* Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

On March 8, 2021, Creditor filed Proof of Claim 1-1. Creditor states under penalty of perjury that the Vehicle has a value of $7,975.00, where the secured portion is stated to be the same amount and $883.40 as an unsecured claim. Proof of Claim 1-1, at p. 2.

Here, Debtor's Declaration states "I believe and assert that the reasonable, fair market value of the ASSET is $6,200.00." Dec., Dckt. 29, at ¶ 4 (emphasis in original). Debtor can provide her opinion, as the owner, of the value. But it must be her opinion. The court construes the phrase "I believe" to be an affirmative statement of value by Debtor, in the nature of, "As the owner of the vehicle, I have determined that the value of it to be $6,200.00."

Debtor does not provide any testimony as to the condition of the vehicle, factual information relevant to having an opinion as to value, as well as the court considering whether such opinion is credible.

A copy of a Kelley Bluebook valuation printout was filed as an Exhibit. Dckt. 30. Debtor does not refer to it in her declaration (or the motion) nor does she properly authenticate it. The Kelly Blue Book valuations are a recognized value guide used in the auto industry and would, in and of itself if properly authenticated, be credible evidence on the question of value.

Interestingly, Kelly Blue Book lists a valuation range of $3,205-$5,904 for a 2011 Ford Escape with 130,000 miles on it. This does not seem to be in line with Debtor's opinion of value of $6,200.

Determination of Value

The lien on the Vehicle's title secures a purchase-money loan incurred on August 11, 2016, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $8,858.40. Proof of Claim, No. 1-1. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of $6,200.00,

the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Collateral and Secured Claim filed by Leslie Theresa Cox ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of One Main Financial Group ("Creditor") secured by an asset described as 2011 Ford Escape ("Vehicle") is determined to be a secured claim in the amount of $xxxxx, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $6,200.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

20. **21-20745-E-13 DPC-1** **LESLIE COX** **Eric Schwab** **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK**
4-14-21 [23]

Final Ruling: No appearance at the May 11, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on April 14, 2021. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is overruled.

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that the Plan depends on the granting of a Motion to Value Collateral.

DISCUSSION

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of OneMain Financial Group, LLC. Debtor filed a Motion to Value the Secured Claim of OneMain Financial Group, LLC on April 15, 2021. The Motion has been set for hearing on May 25, 2021. Dckt. 27. Trustee has filed a Non-Opposition to Debtor's Motion.

The court continues the hearing to 2:00 p.m. on May 25, 2021 to be heard in conjunction with the Motion to Value the secured claim of OneMain Financial Group, LLC.

On May 25, 2021 the court granted Debtor's motion to value. The claim was valued $6,200.00, the valuation sought by Debtor.

There being no other objections from Trustee, the Objection is overruled, and the Debtor's Plan is confirmed.

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

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

The 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 overruled and the Chapter 13 Plan is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

21. 18-27160-E-13 PGM-5 — CLAUDIA/EDWARD JENKINS — Peter Macaluso — MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTORS ATTORNEY(S) — 4-15-21 [108]

Final Ruling: No appearance at the May 25, 2021 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 Debtors, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 15, 2021. By the court's calculation, 40 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Peter G. Macaluso, the Attorney ("Applicant") for Claudia Jenkins and Edward Riley Jenkins, the Debtors ("Client"), makes a Request for the Additional Allowance of Fees and Expenses in this case.

Fees are requested for the period August 21, 2020, through November 2, 2020. Applicant requests fees in the amount of $1,200.00 and costs in the amount of $0.00.

Trustee does not oppose the fees but notes that there is a typographical error for services performed on "11/0/20" described as "Prepared and sent order to Trustee, sent letter to clients regarding outcome of hearing." Dckt. 113. Debtor addressed Trustee's concern and clarified that the correct date is November 2, 2020. Dckt. 116.

APPLICABLE LAW

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

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

Further, the court shall not allow compensation for,

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

11 U.S.C. § 330(a)(4)(A). An attorney must "demonstrate only that the services were reasonably likely to benefit the estate at the time rendered," not that the services resulted in actual, compensable, material

benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Reasonable Billing Judgment

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

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

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

A review of the application shows that Applicant's for the Estate include addressing Trustee's Motion to Dismiss and preparing, filing and appearing at the hearing for the Motion to Modify the Plan. The court finds the services were beneficial to Client and the Estate and were reasonable.

"No-Look" Fees

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

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

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed $4,000.00 in attorneys' fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 106, 107. Applicant prepared the order confirming the Plan.

Lodestar Analysis

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

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

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Motion to Dismiss: Applicant spent 1.75 hours in this category. Applicant reviewed Trustee's Motion to Dismiss; met with clients to discuss; prepared and filed an Opposition; and appeared at the hearing.

Motion to Modify: Applicant spent 2.55 hours in this category. Applicant prepared and filed Motion to Modify; prepared and filed Amended Schedules and Declaration; reviewed Trustee's Response to the Motion; and appeared at the hearing.

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Peter G. Macaluso	3.90	$300.00	$1,170.00
	0.40	$75.00	$30.00
Total Fees for Period of Application			$1,200.00

Costs and Expenses

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

FEES AND COSTS & EXPENSES ALLOWED

Fees

The unique facts surrounding the case, including Trustee's Motion to Dismiss and preparing, filing and appearing at the hearing for the motion to Modify the Plan, raise substantial and unanticipated work for the benefit of the Estate, Debtor, and parties in interest. The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. The request for additional fees in the amount of $1,200.00 is approved pursuant to 11 U.S.C. § 330 and authorized to be paid by David Cusick ("the Chapter 13 Trustee") from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

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

Fees	$1,200.00
Costs and Expenses	$0.00

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Peter G. Macaluso ("Applicant"), Attorney having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Peter G. Macaluso is allowed the following fees and expenses as a professional of the Estate:
>
> Peter G. Macaluso, Professional Employed by Claudia Jenkins and Edward Riley Jenkins ("Debtor")

Fees in the amount of $1,200.00
Expenses in the amount of $0.00,

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

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

22. **17-23361-E-13 GEL-3** **LESLEY PALO** **Gabriel Liberman** **MOTION TO APPROVE LOAN MODIFICATION** **4-23-21 [60]**

Final Ruling: No appearance at the May 25, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 23, 2021. 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.

The Motion to Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by Lesley Marie Palo ("Debtor") seeks court approval for Debtor to incur post-petition credit. Wells Fargo Home Mortgage ("Creditor"), whose claim the Plan provides for in Class 4, has agreed to a loan modification, which provides Debtor with a 30 year loan at $1,339.39 a month with a fixed interest rate of 3.1250%.

The Motion is supported by the Declaration of Lesley Marie Palo. Dckt. 62. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms.

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

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

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

The Motion to Approve Loan Modification filed by Lesley Marie Palo ("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 Lesley Marie Palo to amend the terms of the loan with Wells Fargo Home Mortgage ("Creditor"), which is secured by the real property commonly known as 5622 Terrace Drive, Rocklin, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion (Dckt. 63).

23. 19-23781-E-13 BB-5 | **VERLIN JOHNSON** **Bonnie Baker** | **MOTION TO CONTINUE CASE ADMINISTRATION, SUBSTITUTE PARTY, AS TO DEBTOR** **4-13-21 [77]**

Final Ruling: No appearance at the May 25, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on April 13, 2021. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

The Motion to Substitute is granted.

The surviving spouse of Debtor, Martine Johnson ("Surviving Spouse"), seeks an order approving the motion to substitute Surviving Spouse for the deceased Debtor, Verlin K. Johnson. This motion is being filed pursuant to Federal Rule of Bankruptcy Procedure 1016.

Debtor filed for relief under Chapter 13 on June 14, 2019. On January 10, 2020, Debtor's Chapter 13 Plan was confirmed. Dckt. 74. On February 11, 2021, Debtor Verlin K. Johnson passed away. Surviving Spouse asserts that she is the lawful successor and representative of Debtor.

Pursuant to Federal Rule of Bankruptcy Procedure 1004.1, Surviving Spouse requests authorization to be substituted in for the deceased debtor and to perform the obligations and duties of the deceased party in addition to performing her own obligations and duties. A Suggestion of Death was filed on April 13, 2021. Dckt. 77. As the surviving spouse, Martine Johnson is the successor's heir and lawful representative. Surviving Spouse states that she will continue to prosecute this case in a timely and reasonable manner.

Trustee does not oppose the substitution; and informs the court that under the confirmed plan approximately $54,500.00 remains to be paid to secured, priority, attorney fees and trustee fees plus the Class 1 monthly contract installment under the confirmed plan. Dckt. 86.

DISCUSSION

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

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

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

> Subdivision (a) of Rule 25 of the Federal Rules of Civil Procedure deals with the situation of death of one of the parties. If a party dies and the claim is not extinguished, then the court may order substitution. **A motion for substitution may be made by a party to the action or by the successors or representatives of the deceased party.** There is no time limitation for making the motion for substitution originally. Such time limitation is keyed into the period following the time when the fact of death is suggested on the record. In other words, procedurally, **a statement of the fact of death is to be served on the parties in accordance with Bankruptcy Rule 7004 and upon nonparties as provided in Bankruptcy Rule 7005** and suggested on the record. The suggestion of death may be filed only by a party or the representative of such a party. The suggestion of death should substantially conform to Form 30, contained in the Appendix of Forms to the Federal Rules of Civil Procedure.
>
> The motion for substitution must be made not later than 90 days following the service of the suggestion of death. Until the suggestion is served and filed, the 90 day period does not begin to run. In the absence of making the motion for substitution within that 90 day period, paragraph (1) of subdivision (a) requires the action to be

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

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

Here, Martine Johnson has provided sufficient evidence to show that administration of the Chapter 13 case is possible and in the best interest of creditors after the passing of the debtor. The Motion was filed within the ninety-day period specified in Federal Rule of Bankruptcy Procedure 1016, following the filing of the Suggestion of Death. Dckt. 77. Based on the evidence provided, the court determines that further administration of this Chapter 13 case is in the best interests of all parties, and that Martine Johnson, as the surviving spouse of the deceased party and as the successor's heir and lawful representative, may continue to administer the case on behalf of the deceased debtor, Verlin K. Johnson. The court grants the Motion to Substitute Party.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Substitute After Death filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and Martine Johnson is substituted as the successor-in-interest to Verlin K. Johnson and is allowed to continue the administration of this Chapter 13 case pursuant to Federal Rule of Bankruptcy Procedure 1016.

24. **21-20591-E-13** **JAMES DADE**
EAT-1 **Chad Johnson**

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY AJAX MORTGAGE LOAN TRUST 2018-G
4-6-21 [24]

Final Ruling: No appearance at the May 25, 2021 hearing is required.

The Objection to Confirmation of Plan is dismissed without prejudice.

Ajax Mortgage Loan Trust 2018-G, Mortgage-Backed Securities, Series 2018-G, by U.S. Bank National Association, as Trustee ("Creditor") having filed a Notice of Withdrawal, which the court construes to be an Ex Parte Motion to Dismiss the pending Objection on May 19, 2021, Dckt. 38; no prejudice to the responding party appearing by the dismissal of the Objection; Creditor having the right to request dismissal of the objection pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the response filed by James Oliver Dade ("Debtor"); the Ex Parte Motion is granted, Creditor's Objection is dismissed without prejudice, and the court removes this Objection from the calendar.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Confirmation of Plan filed by Ajax Mortgage Loan Trust 2018-G, Mortgage-Backed Securities, Series 2018-G, by U.S. Bank National Association, as Trustee ("Creditor") having been presented to the court, Creditor having requested that the Objection itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 38, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of Plan is dismissed without prejudice.