UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

June 6, 2017, at 3:00 p.m.

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1. **12-20006-E-13** **KEITH/KELLY RYAN**
PGM-2 **Peter Macaluso**

MOTION TO SUBSTITUTE KELLY M. RYAN FOR KEITH G. RYAN AND/OR MOTION TO WAIVE THE 11 U.S.C. 1328 REQUIREMENT FOR DEBTOR KEITH GREGORY RYAN
4-17-17 [66]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 17, 2017. By the court's calculation, 50 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Substitute is denied.

Joint Debtor, Kelly Ryan, seeks an order approving the motion to substitute Joint Debtor for the deceased Debtor, Keith Ryan. This motion is being filed pursuant to Federal Rule of Bankruptcy Procedure 7025.

Debtor filed for relief under Chapter 13 on January 2, 2012. On February 24, 2012, Debtor's Chapter 13 Plan was confirmed. Dckt. 17. On February 25, 2014, Debtor Keith Ryan passed away. Joint Debtor asserts that she is the lawful successor and representative of Debtor.

Pursuant to Federal Rule of Bankruptcy Procedure 1004.1, Joint Debtor requests authorization to be substituted in for the deceased debtor and to perform the obligations and duties of the deceased party in addition to performing her own obligations and duties. A Notice of Death was filed on October 2, 2015, with Debtor's first Motion to Substitute, which the court denied without prejudice on November 17, 2015. Dckts. 42 & 52. Joint Debtor is the spouse of the deceased party and is the successor's heir and lawful representative. Joint Debtor states that she will continue to prosecute this case in a timely and reasonable manner.

The Motion pleads that all plan payments have been made and that the Plan has been completed.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on May 23, 2017. Dckt. 74. The Trustee stresses that the court denied Debtor's prior Motion to Substitute stating that the reasons included "failure to provide updated financial information, to properly list the life insurance proceeds, or to properly assert that continued administration is in the best interest of the estate." *See* Dckt. 52.

The Trustee reports that now Debtor has amended the schedules. Previously, Debtor reported that $50,000.00 received from life insurance proceeds had been spent on funeral costs, college tuition for two children, and supplementing her income. *See* Dckt. 44. Now, Debtor claims that $15,000.00 was spent on funeral costs, and $32,000.00 was spent on college tuition. *See* Dckt. 68.

The Trustee did not file a motion to dismiss this case after the last motion to substitute was denied because Debtor was current, and he states that in hindsight, he should have asked the court to dismiss or convert the case if that motion had been denied.

Based upon the original Schedule I, the Trustee notes that the surviving Debtor had about 56% of the income, earning $4,618.20 per month with Kaiser Permanente. The Trustee states that the surviving Debtor did not have $125,580.00 of the projected income. Payments of $58,888.85 were made from March 2014 until the present, which is more than the scheduled plan payment of $1,922.00 per month because the Plan included an ongoing mortgage payment that increased.

The Trustee states that Debtor was somehow able to continue making plan payments. Based upon the Trustee's review of Schedule J, the Trustee does not see how Debtor could have paid expenses without using the insurance funds, unless Debtor had undisclosed assistance. The Trustee doubts that the insurance proceeds were used as Debtor says.

Relying upon Federal Rule of Bankruptcy Procedure 1017, the Trustee states that a Chapter 13 case appears to be subject to dismissal, unless the court determines that further administration is possible and in the best interest of the parties. While Debtor previously moved for further administration, the court

neither determined that further administration was possible, nor did it determine that the case should be dismissed.

The Trustee reports that unsecured claims received a dividend of approximately 14%, although no dividend was guaranteed by the Plan.

As a final note, the Trustee states that if the court denies this Motion, then there remains a question about whether the case is dismissed as to the surviving Debtor, the deceased Debtor, or both.

DEBTOR'S REPLY

Debtor filed a Reply on May 29, 2017. Dckt. 77. Debtor states several events have occurred since the prior motion was denied that should satisfy the court. First, Debtor states that Amended Schedules B and C have been filed to reflect the insurance proceeds and exempt those funds.

Second, Debtor states that Amended Schedules I and J will be filed prior to the hearing.

Third, Debtor reiterates that Debtor's Declaration explains that the insurance funds were used for funeral expenses, college tuition, and for supplementing Debtor's expenses.

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.**
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> 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, Kelly Ryan has not 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 deceased debtor. The original Motion was filed within the ninety-day period specified in Federal Rule of Bankruptcy Procedure 1016, following the simultaneous filing of the Notice of Death. Dckt. 42. Now, though, Debtor offers no explanation to the court why there has been a delay since November 2015 before filing the present Motion. Debtor has not provided the court with any reason to enlarge the ninety-day window. That alone is sufficient to deny this Motion.

The Debtor's credibility is significantly impaired. On Original Schedule B, no life insurance policies were disclosed. Dckt. 1 at 24. On Schedules I and J, Debtor and her late spouse were able to squeeze out only $1,922.00 in Net Monthly Income to fund a plan. *Id.* at 35-37. This was based on average monthly take home income of $6,382.79.

The confirmed Chapter 13 Plan (Dckt. 5) used the $1,922.00 per month to make the monthly mortgage payment, the monthly mortgage arrearage cure payment, the car loan payment, and the nondischargeable taxes. After paying Debtor's counsel's fees and the Chapter 13 Trustee fees, there was a minimum dividend of 0.00% for creditors holding general unsecured claims.

No supplemental Schedules I or J have been filed by Debtor. The late co-debtor passed away on February 25, 2014. In October 2015 Debtor and her current counsel first came to this court, disclosing the death of the co-debtor twenty-two months earlier. In supporting that Motion, Debtor testified under penalty of perjury:

> "12. I received $50,000.00 in life insurance proceeds from the death of my husband. The money has been used for funeral costs, college tuition for my two college aged children, and the remainder is supplementing my income now that I am the sole provider for my family."

Declaration, ¶ 12; Dckt. 44. While stating this conclusion, Debtor and Debtor's counsel offered no current income and expense information. Even though losing half of the family income, Debtor's attitude shown in the prior motion and declaration was merely, "Judge, I say I can do it, so you just sign the order."

The court addressed this shortcoming in the ruling on the prior motion, holding:

> "The court nor any other party in interest can determine, based on the evidence presented, whether it is possible for the Debtor to continue the administration of the estate when the Debtor no longer has the income of the deceased debtor, does not provide supplemental Schedules evidencing both the current income and expenses, nor does the Debtor provide supplemental Schedules B and C as to the life insurance proceeds. Instead, the Debtor merely mentions the life insurance proceeds in passing in the Motion and then states, in generalities, how the Debtor used those funds without providing specifics or what remains of the funds.
> . . .
> In substance, Debtor and her counsel seek to rewrite the Bankruptcy Code to be one in which the Code is what the Debtor says it is. The Debtor can have significant financial changes, but accurate information as to the changes is nobody's business but the Surviving Debtor. Even though almost 50% of the gross monthly income has been lost with the death of the Deceased Debtor, the Surviving Debtor has somehow been able to continue performing the plan which required the now missing income. Schedule I, Dckt. 1. Looking at Schedule J, Surviving Debtor and the Deceased Debtor provided financial information showing that the Deceased Debtors income was necessary to generate the projected disposable income to fund

> the Plan with $1,922.00 a month. Even with the now missing income, the Surviving Debtor and Deceased Debtor could provide for only a 0.00% dividend for creditors holding general unsecured claims, while making the mortgage payment, curing the pre-petition mortgage arrearage to keep their home and pay nondischargeable taxes. Plan, Dckt. 5. How that could occur is nobody's business except that of the Surviving Debtor no explanation to be provided.
>
> The Surviving Debtor has elected to wait until the money has been spent and the however I did it without half our income operation of the plan over the past twenty-one months (since the February 24, 2014 passing of the Deceased Debtor) to bring this to the intention of the court. This effectively frustrates the exercise of judicial power of the court to properly apply the Bankruptcy Code, as written by Congress and not as dictated by the Surviving Debtor, to this case."

November 17, 2015 Civil Minutes, Dckt. 52 at 3–4.

Rather than promptly addressing these shortcomings and providing honest, truthful current financial information, Debtor and her counsel have employed a strategy of ignoring the court for thirty-one (31) months since the November 2015 denial of the prior motion and now demand such relief from this court. This may well be a preconceived strategy to try to "jam the court," contending that the sixty months have been completed and it would be "unfair" for this poor widow to be denied her and her late husband's discharge. Unfortunately, it is Debtor's lack of action, candor, and truthful testimony that is causing her to lose her discharge.

In her most recent declaration (Dckt. 68) the court does not find her newly proffered testimony that "At the time that I attempted the first request for relief I had already spent the money received was in a state of shock, and I wanted to insure that the money was used as my husband had intended taking care of the children's education that I would no longer be able to provide for" exculpatory. Rather, it is damning. Debtor admits that irrespective of whatever legal obligations she had, she was going to spend the money as she pleased. Now, she professes to having been in shock. She did not so contend in 2015 with her original declaration, and then she did not in 2016, choosing to ignore the issue. She did not in 2017, until recently filing the current motion, again choosing to ignore the issue, ensuring that no court would step in to interfere with her desired use of the monies.

In her 2015 testimony, Debtor clearly states that not all of the money had been spent. Declaration, ¶ 12; Dckt. 44 (stating that Debtor is using the money to "supplement her income"). But by her April 2017 declaration, she states under penalty of perjury that of the 2015 declaration all of the money had been spent—telling the court that her prior testimony under penalty of perjury was false. Declaration, ¶ 13; Dckt. 68.

Using the only financial information provided as to income and expenses, the court concludes that there is no financial way for Debtor to have completed this plan based upon her income and use of the insurance proceeds. Debtor's monthly take home income is only $3,423.25. Schedule I, Dckt. 1 at 35. The family monthly expenses were $4,460.00, leaving a shortfall of ($1,037) per month. Even after reducing

the food expense ($875 per month to $700) and transportation expense ($680 to $750) for one less person in the family, there is still a ($732) per month shortfall of income to cover expenses.

Another financial abnormality arises in reviewing the only Schedules I and J filed in this case and Debtor's testimony that college tuition was being paid. When this case was filed in January 2012, Debtor listed the children's ages as 16 and 18. Schedule I, Dckt. 1 at 35. Not surprisingly, no tuition expense is provided on Schedule J (presumably both children were still in high school). *Id.* at 37.

However, no explanation is provided for how in 2013 tuition was paid for the older child, nor in 2014 (prior to receiving the insurance monies). The income and expenses when there were two debtors did not have any leeway for having such additional substantial expense.

Taking Debtor's current testimony under penalty of perjury as truthful that all of the insurance money was spent as of November 2015, that results in there being at least a ($10,248) shortfall of income over expenses ($732 shortfall monthly times fourteen months). Debtor offers no explanation where this extra $10,248 has come from to fund this plan.

Even if Debtor had not spent all of the money as of November 2015, she testifies that $15,000 was spent on the funeral and $32,000.00 for college tuition. That would have left only $3,000.00 remaining as of November 2015—clearing an insufficient amount to subsidize the plan, if Debtor had any intention of properly using the monies as permitted by the Bankruptcy Code.

Based on the evidence provided, the court determines that further administration of this Chapter 13 case is not in the best interests of all parties. As the court addressed on November 17, 2015, Debtor waited until the insurance proceeds had been spent before moving to be substituted as the successor in interest, effectively frustrating the exercise of judicial power to properly apply the Bankruptcy Code, as written by Congress and not as dictated by Debtor.

Unfortunately for Debtor, she operated outside of the Code following the death of her spouse, but that is not a justification for her actions. Now, at the end of her case, the Trustee has noted that she was able to complete the Plan without modifying it, despite contributing slightly more than half of the household income. That ability to continue payments and complete the Plan suggests to the court that Debtor has continued to operate outside of the Code and may have hidden assets and income from the court. The specter of mismanagement and poor decisions by Debtor in this case indicates to the court that substitution as the deceased Debtor's successor in interest is not in the best interest of creditors.

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

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

2.	**16-20408-E-13** **PGM-1**	**BRUCE/BERNICE WATSON** **Peter Macaluso**	**MOTION FOR OMNIBUS RELIEF UPON DEATH OF DEBTOR AND/OR MOTION TO SUBSTITUTE BERNICE M. WATSON FOR BRUCE G. WATSON AS SUCCESSOR-IN-INTEREST , MOTION TO WAIVE THE 11 U.S.C. § 1328 REQUIREMENT FOR DEBTOR BRUCE G. WATSON , MOTION/APPLICATION FOR EXEMPTION FROM FINANCIAL MANAGEMENT COURSE** **4-12-17 [33]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 12, 2017. By the court's calculation, 55 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Substitute is denied.

Joint Debtor, Bernice Watson, seeks an order approving the motion to substitute Joint Debtor for the deceased Debtor, Bruce Watson. This motion is being filed pursuant to Federal Rule of Bankruptcy Procedure 7025.

Debtor filed for relief under Chapter 13 on January 26, 2016. On April 26, 2016, the Debtor's Chapter 13 Plan was confirmed. Dckt. 26. On December 8, 2016, Debtor Bruce Watson passed away. Joint Debtor asserts that she is the lawful successor and representative of Debtor.

Pursuant to Federal Rule of Bankruptcy Procedure 1004.1, Joint Debtor requests authorization to be substituted in for the deceased debtor and to perform the obligations and duties of the deceased party in addition to performing her own obligations and duties. A Suggestion of Death was filed on January 4, 2017. Dckt. 31. Joint Debtor is the spouse of the deceased party and is the successor's heir and lawful representative. Joint Debtor states that she will continue to prosecute this case in a timely and reasonable manner.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on May 23, 2017. Dckt. 38. The Trustee states that he has no basis to oppose the Motion.

DISCUSSION

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

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

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

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

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

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

Local Bankruptcy Rule 5009-1(b) requires the filing with the court of Form EDC3-190 Debtor's 11 U.S.C. § 1328 Certificate. LOCAL BANKR. R. 1016-1 permits a movant, in a single motion, to request for the substitution for a representative, the authority to continue the administration of a case, and waiver of post-petition education requirement for entry of discharge.

Untimely Motion—No Relief Requested

The Motion was not filed within the ninety-day period specified in Federal Rule of Bankruptcy Procedure 1016, following the filing of the Suggestion of Death. Dckt. 31. The court calculates that ninety-eight days transpired between the filing of the Notice of Death on January 4, 2017, and the filing of this Motion on April 12, 2017. *Compare* Dckt. 31, *with* Dckt. 33. The Motion must be filed within ninety days of filing the notice of death. *Hawkins*, 135 B.R. at 384; *see also In re Bell*, 92 B.R. 911 (Bankr. E.D. Cal. 1988). That ninety-day window may be enlarged, but Debtor has not presented any argument to the court why the window should be enlarged to accommodate ninety-eight days.

Furthermore, Local Bankruptcy Rule 1016-1 states that a notice of death shall be served on the Trustee, United States Trustee, and any other parties in interest. A review of the docket shows that no proof of service was submitted along with the Notice of Death in this case.

Failure to Provide Evidence That Continued Administration is Possible

The Motion asserts that based on the income and expense exhibits continuation of this Chapter 13 case is feasible. The Motion does not state with particularity the current finances and changes in finances following the death of the co-debtor.

Debtor's testimony (Declaration, Dckt. 35) only provides the court with Debtor's direction that the exhibits show that continuation of this case is feasible. Debtor provides the court with no assistance in understanding the income and expense information.

Debtor states that her current gross monthly income is $6,176.00. Exhibit 3, Schedule I form; Dckt. 36. The Exhibit states that Debtor's take-home income is $4,216.63. In addition, Debtor is receiving a monthly survivor benefit of $1,307.15.

On Original Schedule I, Dckt. 17 at 2, Debtor stated her gross monthly income was $6,048 and her take-home was $4,079.55. The deceased co-debtor was stated to have $2,977.00 in monthly income.

For expenses, Debtor now states that they are $4,673.00. Exhibit 3, Schedule J form; Dckt. 36. These expenses include: (1) $600.00 for food and housekeeping supplies, (2) $250.00 for personal care products, (3) $640.00 for transportation, and (4) $210.00 for vehicle insurance. The court understands Debtor's statement to be that her expenses since January 2017 and going forward.

For two debtors, Original Schedule J stated that there were $6,556.55, with the two debtors maintaining two separate households. For the surviving Debtor, her monthly expenses were stated under penalty of perjury to be $3,776.05. Dckt. 17 at 6–7. Debtor's expenses when this case was filed in January 2016 included: (1) $350.00 for food and housekeeping supplies, (2) $142.00 for personal care products, (3) $450.00 for transportation, (4) $85.00 for vehicle insurance, (5) $150.00 tax offset her, (6) $50.00 tax offset ftb (there being no tax offsets included in the new 2017 expenses).

The only effort by Debtor to testify as to the "new" expenses is to state that whatever is stated in the exhibit is true and correct. No information is provided the court as to how her: (1) monthly food and housekeeping expense has increased 71.4% ($250.00), (2) personal care product expense has increased 76% ($158), (3) transportation expense has increased 42.2% ($190.00), (4) vehicle insurance has increased 147% ($130), and (5) how the $200.00 in tax offsets have disappeared and not been accounted for in an increase in Net Monthly Income.

By the evidence presented by Debtor, she has $928.00 in other expenses that have materialized so as to create the appearance that all Debtor has monthly to prosecute this case is $850.00. Exhibit 3, Schedule J form; Dckt. 36 at 15. Based on the financial information presented, Debtor appears to have $1,778.00 per month of Net Monthly Income.

There are several possible conclusions that could be drawn from this evidence. The first is that Debtor lacks the financial acumen to understand her finances and has just signed whatever is put in front of her. The late co-debtor may have been the "financial brains" of the union. The second is that the original schedules were not grounded in economic reality but "MAI (made as instructed) Schedules," with Debtor providing counsel with incorrect information to yield a pre-determined Net Monthly Income amount to fund the Plan only as Debtor desired, not what was required by law. Third, and a darker possibility, is that the prior schedules were prepared by Debtor and counsel intentionally to misstate the financial information so as to justify the current payment amount and allow Debtor to keep the "extra" Net Monthly Income.

Whatever the case, and presuming the most benign, Debtor has demonstrated that she does not have the ability to continue in the prosecution of this bankruptcy case. The all-but-perfunctory method of presenting the financial information and her lack of any specificity in the declaration shows that Debtor is not seeking to continue in the prosecution of this case, at least as required by the Bankruptcy Code.

The Motion is denied.

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

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

3.	**13-30919-E-13** **PGM-7**	**BUN AUYEUNG AND SOO TSE** **Peter Macaluso**	**MOTION TO SUBSTITUTE SOO HAN TSE FOR BUN AUYEUNG TO COMPLETE ADMINISTRATION OF CASE, MOTION TO WAIVE THE 11 U.S.C. SEC. 1328 CERTIFICATE REQUIREMENT AS TO DEBTOR BUN AUYEUNG AND/OR MOTION FOR EXEMPTION FROM FINANCIAL MANAGEMENT COURSE** **4-18-17 [304]**

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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 18, 2017. By the court's calculation, 49 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Substitute is granted.

Joint Debtor, Soo Han Tse, seeks an order approving the motion to substitute the Joint Debtor for the deceased Debtor, Bun Auyeung. This motion is being filed pursuant to Federal Rule of Bankruptcy Procedure 7025.

Debtor filed for relief under Chapter 13 on August 19, 2013. On August 2, 2016, Debtor Bun Auyeung passed away. The Joint Debtor asserts that she is the lawful successor and representative of Debtor.

Pursuant to Federal Rule of Bankruptcy Procedure 1004.1, the Joint Debtor requests authorization to be substituted in for the deceased debtor and to perform the obligations and duties of the deceased party in addition to performing her own obligations and duties. A Suggestion of Death was filed on August 29,

2016. Dckt. 258. Joint Debtor is the surviving spouse of the deceased party and is the successor's heir and lawful representative. Joint Debtor states that she will continue to prosecute this case in a timely and reasonable manner.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on May 19, 2017. Dckt. 323. The Trustee states that Debtor does not appear to have addressed or resolved the court's concerns with the prior motion to substitute that was denied on October 18, 2016. Dckt. 274. The Trustee argues that there is no substantial new evidence to support this Motion.

DEBTOR'S REPLY

Debtor filed a Reply on May 29, 2017. Dckt. 328. Debtor states that events have transpired since the October 18, 2016 that resolve the court's concerns. First, Debtor states that the Bankruptcy Dispute Resolution Program meeting held on January 27, 2017, was concluded favorably with a resolution and a compromise. During the program, Debtor asserts to have represented her interests directly and through her daughter, when necessary. Debtor asserts that the court's concerns have been abated because she demonstrated at the dispute resolution meeting that was not being manipulated by people who are looking to inherit her property, especially because the compromise reached requires the parties to pay a settlement fund upon Debtor's death, or sooner.

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*, 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.

Prior Concerns Delineated by the Court

The court is concerned still whether Soo Han Tse is capable to serve in the capacity as the personal representative of the interests of the deceased Co-Debtor in this case, and quite possibly incapable

of knowingly, competently representing her own interests, even with the assistance of knowledgeable counsel. This Chapter 13 case has not been prosecuted diligently.

Debtor Soo Han Tse argued through her counsel that she did not need to propose a plan after confirmation was denied in 2014 because she believed she was right and the court denying confirmation was wrong. Merely because Debtor chooses to appeal a ruling of the court does not exempt her from the basic requirements of a Chapter 13 case that there be a plan confirmed and performed. See court's Civil Minutes from October 12, 2016 hearing on Trustee's Motion to Dismiss, Dckt. 269. A Third Amended Plan was filed and set for hearing on April 21, 2017, but the Trustee has noted in his Opposition to this Motion that Debtor does not appear to have addressed the court's concerns with this case, and ignoring those concerns does not make them disappear.

Also, as this court has noted previously, it is questionable that the two debtors were acting in their own best interests. It appears that it may be that they are (or have been now that one debtor has died while never being able to use the exempt equity for his care and basic life needs) being manipulated by those who are looking to inherit the equity in the Debtor's real property. It has been described by counsel for Debtor that Debtor was living in a converted chicken coop. Debtor's counsel provided pictures in connection with earlier hearings, with the premises in which the two debtors resided being a cross between a dilapidated shack and a hoarder's paradise with only small paths to walk amid the piles of "stuff" in the converted chicken coop. FN.1.

FN.1. The court did not find persuasive Debtor's counsel's arguments that because the debtors were from a foreign country they liked/were use to/preferred to live in the converted chicken coop squalor. See photographs attached to appraisal filed by Debtor; Exhibit C, Dckt. 107. In the Civil Minutes, Dckt. 198, the court made determinations and cited to prior rulings, including (emphasis added):

A. "The court is also not impressed by the plea that the Debtors are 80 year old people living on retirement pensions. **At one point counsel's arguments bordered on contending that his clients were and are incompetent.**.... 09-35065; Civil Minutes, Dckt. 215"

B. "The Debtors admit that they have not regular monthly income sufficient to fund a plan. Rather, instead of a good faith plan being funded by the Debtors, **some other family members appear to be pulling the strings**, quite possibly **for their own financial advantage**. The **Debtors appear to be the poor sacrificial lambs** who are being **deprived of their homestead exemption** while **other family members appear to be lining their pockets** with future gain."

Additionally, Debtor's contention that she is not being manipulated because she was able to communicate at a dispute resolution program is not persuasive and is misleading to the court. Debtor admits in her Reply that at times her daughter spoke on her behalf. Dckt. 328. At the October 18, 2016 hearing, Debtor's counsel advised the court that Debtor does not speak English. Dckt. 274, at 3. Debtor's daughter was present at that hearing, and she did not appear to be providing a full translation of the proceeding. Though counsel argued that Debtor was unable to understand the legal consequences of the proceeding due

to her level of sophistication (which does not bode well for a request to be appointed as the representative for the interests of the deceased co-Debtor, or even for Debtor being competent to continue in the administration of her case), Debtor's daughter informed the court that in addition Debtor has a university education.

When pressed as to why Debtor was not prosecuting this case and not availing herself of the substantial homestead exemption she and the deceased co-Debtor could take from a sale of the property and provide for basic needs and medical care (given the admitted absence of any significant monthly income), Debtor's counsel responded that Debtor wanted to stay in the house. Debtor's counsel also opined that the worst thing that could happen would be for the case to be dismissed and Debtor claiming a higher dollar amount exemption.

Debtor's counsel did not provide the court with any basis for such a belief. Counsel did not address the legal basis for contending that Debtor could claim a higher exemption at some time in the future. Debtor's counsel did not direct the court to any statute that expressly governs the amount of exemptions, the fixing of judgment liens and abstracts of judgment, and the duration of a homestead exemption.

In substance, the court understood counsel's position to be that Debtor wants to live in the house now and die there, without regard to the economic consequences, to herself and to her heirs, of not availing herself of the ability to force a sale of the property in bankruptcy and force the creditor to take the value of the secured claim as determined pursuant to 11 U.S.C. § 506(a).

At the October 18, 2016 hearing, the court stressed that Debtor may appreciate that her decision to stay in the house (now, presented as a compromise with the creditor) until she dies, solely to keep the creditor from receiving anything while she is alive, may have serious negative economic consequences for Debtor's heirs. Dckt. 274, at 4.

Evidence Presented in Support of this Motion and Other Matters Pending Before this Court

In the present Motion it is argued that Debtor has been making the plan payments, with $17,200.00 to date. Debtor admits that the source of the payments has been from her Social Security benefits and money from her daughter. On the Supplemental Schedule I, Debtor states under penalty of perjury that her monthly Social Security Benefits are only $889.40 per month, with her daughter contributing an additional $550.00 per month. Dckt. 285 at 2–3. Debtor's monthly expenses as stated on Supplemental Schedule J are $1,339.31, which shows that Debtor has no Net Monthly Income to fund a plan, but that Debtor's daughter is funding the plan.

As stated previously in this case and in the proposed Third Amended Chapter 13 Plan, Debtor's daughter has also funded a $13,000.00 lump sum payment into the Plan. Thus, based on the evidence presented by Debtor, this Chapter 13 "Plan" funded by Debtor has been funded almost entirely by third party payments from the daughter.

This has been a tortured case, following the prior bankruptcy case in which misrepresentations were made to the court. Debtor has long used with the assistance of the same counsel in both cases, to get what she deemed right without regard to the law as written by Congress

In saying the "Debtor," it may well be that the Daughter and other family members are seeking to profit from the abuse of the two elderly debtors. As counsel for Debtor admitted, Debtor has such a limited ability in using the English language, there has been virtually no direct communications between counsel and Debtor. Everything appears to have been filtered through the Daughter, who is funding the plan and was allowing her parents to live in the chicken coop squaller.

Finally, while on appeal before the Ninth Circuit, Debtor and her nemesis negotiated a settlement of the dispute which has been the excuse for Debtor not actively prosecuting this case. A motion to approve that settlement was filed on April 18, 2017. Dckt. 309. The Motion states that the terms of the settlement are set forth in an exhibit, but the Motion itself does not state what the terms are to be approved. Buried on page 4 of the motion is the statement that Debtor owes Creditor approximately $218,166 and offered $140,000.00 in settlement. Florence Auyeung (an unidentified person) agrees to waive any homestead rights she may have. Creditor agrees not to sell the property pursuant to its judgment lien until after the death of Debtor.

The Settlement Agreement itself, filed as Exhibit A, Dckt. 311, includes the following provisions. Creditor's claim is in the principal amount of $140,000. Interest has accrued on the judgment at 10% per annum since August 30, 2010. The Interest shall be waived, unless the subsequent condition occurs. If a subsequent bankruptcy case is filed by Debtor or the property subject to the judgment lien is encumbered by a further voluntary lien, the interest is not waived.

Interest at the rate of 10% per annum will accrue on the judgment from and after April 1, 2017, until the judgment and post-April 1, 2017 interest is paid.

No sale of the property shall be conducted by Creditor until after the death of Debtor, unless the subsequent bankruptcy condition or voluntary encumbrance of the property condition occurs.

Florence Auyeung is identified as the adult daughter of Debtor and the Settlement Agreement states that she waives and subordinates any homestead exemption that could be claimed in the property that is the subject of the Settlement Agreement.

Granting of Motion

Notwithstanding the shortcomings in the present Motion and supporting pleadings, and the apparent "enlistment" of the court staff to assemble for Debtor sufficient grounds upon which this Motion may be granted, the court grants such relief. Debtor, over a long and winding road, quite possibly with little understanding of her actual legal obligations and rights, has achieved a Settlement to be approved by this court. This Settlement is consistent with the prior orders of this court. The Settlement would allow Debtor to provide for her current expenses and maintain a modicum of a decent living environment (rather than a chicken coop existence) though what now appears to be preserved homestead exemption.

The court grants the Motion and substitutes Soo Han Tse as the personal representative for the late Bun Auyeung, her co-debtor, in this bankruptcy case. The court waives the post-petition Financial Requirement for Bun Auyeung. The court does not waive the 11 U.S.C. § 1328 requirements for Bun Auyeung in light of his personal representative being able to fulfill that condition.

The court orders that the administration of this bankruptcy case shall proceed, a personal representative for Bun Auyeung having been appointed.

Based on the evidence provided, the court determines that further administration of this Chapter 13 case is not in the best interests of all parties, and that Joint Debtor, Soo Han Tse, as the surviving spouse of the deceased party and as the successor's heir and lawful representative, is not capable to administer the case on behalf of the deceased debtor, Bun Auyeung. The court grants the Motion to Substitute Party.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for 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 Soo Han Tse is appointed as the personal representative for the late Bun Auyeung, her co-debtor, in this bankruptcy case. The court waives the post-petition Financial Requirement for Bun Auyeung. The court does not waive the 11 U.S.C. § 1328 requirements for Bun Auyeung in light of his personal representative being able to fulfill that condition.
>
> **IT IS FURTHER ORDERED** that the administration of this Chapter 13 case shall continue as to both Chapter 13 Debtors, a personal representative having been appointed for the late Bun Auyeung. Federal Rule of Civil Procedure 7025, Federal Rules of Bankruptcy Procedure 9014 and 1016.

4. **13-30919-E-13** **BUN AUYEUNG AND SOO TSE** **MOTION TO COMPROMISE CONTROVERSY / APPROVE SETTLEMENT AGREEMENT WITH CHRISTENSENS**
PGM-8 **Peter Macaluso** **4-18-17 [309]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 18, 2017. By the court's calculation, 49 days' notice was provided. 28 days' notice is required.

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

Bun Auyeung and Soo Han Tse, Chapter 13 Debtor ("Movant"), request that the court approve a compromise and settle competing claims and defenses with Paula Christensen and Barton Christensen ("Settlor"). The claims and disputes to be resolved by the proposed settlement are related to a motion to avoid lien that is on appeal before the Ninth Circuit Court of Appeals.

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 311):

A. The principal amount of Settlor's judgment lien encumbering Debtor's real property and its improvements is $140,000.00.

B. Simple interest has accrued since August 30, 2010, at 10% annually in the amount of $78,166.00 as of March 31, 2017.

1. The accumulated interest shall be waived and shall not be added to the judgment lien, unless certain subsequent conditions occur.

C. Interest shall accrue at 10% annually after April 1, 2017, until the judgment lien is paid fully or satisfied by a compromise.

D. Settlor shall not seek to foreclose the judgment lien until after the death of Movant Soo Han Tse, subject to subsequent conditions.

E. If Soo Han Tse files another bankruptcy petition, or if her property is encumbered by a voluntary lien without full satisfaction of Settlor's lien, then

1. The $78,166.00 accumulated interest shall be added back to the judgment lien, and

2. Settlor may immediately proceed to foreclose.

F. Soo Han Tse shall not be personally liable for payment of the judgment lien and any accumulated interest.

1. The judgment lien and interest are collectable only from the property.

2. The judgment lien shall remain enforceable against the property until paid in full, including all interest, or until compromised or reconveyed or released, without the necessity of seeking an order of the Bankruptcy Court of the Superior Court of California renewing the underlying judgment upon which the lien is based.

G. Florence Auyeung waives any homestead right she may have in the property.

H. Movant is not prevented from selling the property voluntarily.

1. Settlor shall not be obligated to reconvey or release the judgment lien to facilitate such a sale until and unless the lien and interest are paid fully or otherwise settled.

I. Following court approval of the compromise, the parties shall jointly file a stipulated dismissal of the appeal pending before the Ninth Circuit Court of Appeals.

J. Movant shall file a new Chapter 13 plan consistent with the compromise and shall not attempt to value the property (Settlor's claim) or seek to avoid the judgment lien.

K. Nothing in the agreement prevents Movant from satisfying the judgment lien by paying the then-principal balance plus interest outstanding.

TRUSTEE'S NON-OPPOSITION

David Cusick, the Chapter 13 Trustee, filed a Non-Opposition on May 17, 2017. Dckt. 321. The Trustee states that he does not oppose this Motion as long as the Motion for Omnibus Relief Upon Death of Debtor is granted.

DISCUSSION

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

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

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

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

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

Movant argues that the four factors have been met.

Probability of Success

Movant argues that without this compromise, Debtor faces an uphill battle to prosecute the case successfully.

Difficulties in Collection

Movant argues that collection is difficult because the underlying matter (a motion to avoid lien) continues to be litigated with likely future appeals.

Expense, Inconvenience, and Delay of Continued Litigation

Movant argues that the matters on appeal require specialized knowledge and skills, despite being clear in bankruptcy court.

Paramount Interest of Creditors

Movant argues that settling is in the best interest of creditors to avoid further litigation, which could possibly be rendered moot by a voluntary sale of property outside of bankruptcy at which point creditors may not receive what has been offered as the compromise presented in this Motion.

Consideration of Additional Offers

At the hearing, the court announced the proposed settlement and requested that any other parties interested in making an offer to Movant to purchase or prosecute the property, claims, or interests of the estate present such offers in open court. At the hearing ----------.

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because it allows Movant remain in her home (her chief concern) while also assuring Settlor that there will be recourse if the lien goes unpaid. The Motion 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 Approve Compromise filed by Bun Auyueng and Soo Han Tse, Chapter 13 Debtor ("Movant"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Approval of Compromise between Movant and Paula Christensen and Barton Christensen ("Settlor") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion (Dckt. 311).

5. 15-28400-E-13 HEATHER URBAN MOTION TO MODIFY PLAN
LBG-2 Lucas Garcia 4-13-17 [45]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 13, 2017. By the court's calculation, 54 days' notice was provided. 35 days' notice is required.

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.

Heather Urban ("Debtor") seeks confirmation of the Modified Plan because Debtor took time off work to care for her daughter and lost income as a result. Dckt. 48. The Modified Plan proposes to increase the plan payment by $350.00 to $5,150.00 per month starting in the sixteenth month on February 25, 2017. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on May 23, 2017. Dckt. 52. The Trustee argues that Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6).

Debtor has failed to adequately explain a large increase in income for the six-month period of September 2016 through February 2017 reflected in Debtor's profit and loss statement. Dckt. 47. This document shows a gross income of $141,171.51 for that six-month period, whereas the Debtor's gross income for 2014 was $153,820.00 and for 2013 was $157,630.00.

Also, the Trustee states that Debtor's declaration does not include a tax expense in the budget. Dckt. 48. Additionally, changes in monthly expenses are not explained. There may be inconsistent classifications of expenses, for example some months show utilities for $0.00. Lastly, a line for daughter's expense of $11,785.53 appears inappropriate because the daughter was not listed as a dependent on Schedule J. Dckt. 1.

DEBTOR'S REPLY

Debtor filed a Reply on May 30, 2017. Dckt. 55. Debtor argues that the increase on the Statement of Financial Affairs was found previously by the court to be an error: Net income had been used, instead of gross income. Second, Debtor responds that her typical tax burden is reflected on Amended Schedule J.

Third, Debtor states that her bills are precise. She states that there were months when she paid one or more bills late and had to pay more the following month. Lastly, Debtor states the additional expense of $11,785.53 was for assistance she gave to her daughter following a premature birth.

DISCUSSION

Despite Debtor's Reply, the court is still uncertain about the viability of Debtor's plan. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Additionally, the good faith of Debtor is put into question in this case. Debtor clearly was aware of having substantially more net monthly income than the $4,800.00 stated under penalty of perjury used to confirm a plan with a 1% dividend to creditors holding general unsecured claims in this bankruptcy case. Debtor's prior statements under penalty of perjury were (conveniently) "just enough" to allow Debtor to make a $3,219.28 monthly mortgage payment, a $332.16 additional mortgage arrearage cure payment, make a $559.00 monthly payment for the two cars Debtor wants to keep, and pay Debtor's nondischargeable Class 5 debt.

The existence of the substantially higher income comes to light only after Debtor defaulted in the plan payments. Motion to Dismiss, Dckt. 22. Debtor now admits to having had an "extra" undisclosed $350.00 per month, which now "exists" to allow Debtor to stay in the bankruptcy case. This bankruptcy case having been filed on October 29, 2015, for the nineteen months of under payments, that totals $6,650.00. While that amount is dealt with as a mere "scrivener's error" by Debtor, to be ignored, it actually would provide for a 29.5% dividend on the filed general unsecured claims to date—not the mere 1% that Debtor purported to only being able to eek out over sixty months of a Chapter 13 plan.

Debtor has not been prosecuting this case in good faith. Debtor has demonstrated that she does not intend to provide for creditors as required by the Bankruptcy Code, but merely pay the creditors who could foreclose on the things she wants to keep or the nondischargeable debt.

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

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

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

6. 13-34801-E-13 DCN-3 — ESTHER HWANG, Eric Gravel — MOTION TO SELL, 4-24-17 [83]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 24, 2017. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

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

The Motion to Sell Property is granted.

The Bankruptcy Code permits Esther Hwang, Chapter 13 Debtor, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the real property commonly known as 106 Northcreek Circle, Walnut Creek, California ("Property").

The proposed purchasers of the Property are Emilio Casco and Daphne Casco, and the terms of the sale are:

A. Purchase price of $589,000.00;

B. Escrow to close on May 16, 2017;

C. Listing agent is North American Realtors;

D. Selling agent is Clocktower Realty;

E. Initial deposit of $17,670.00; and

F. Remainder of the purchase price furnished through a loan at a fixed rate of 4.50%;

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on May 17, 2017. Dckt. 93. The Trustee states that he does not oppose the Motion as long as Debtor pays 100% to all creditors—totaling $176,917.00—, which includes 9.0% compensation to the Trustee.

DISCUSSION

At the time of the hearing, the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing, the following overbids were presented in open court: xxxxxxxxxxxxxxx.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because it pays the Plan fully.

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 Sell Property filed by Esther Hwang, 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 Esther Hwang, Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Emilio Casco and Daphne Casco or nominee ("Buyer"), the Property commonly known as 106 Northcreek Circle, Walnut Creek, California ("Property"), on the following terms:
>
> A. The Property shall be sold to Buyer for $589,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit 1, Dckt. 86, and as further provided in this Order.

B. The sale proceeds shall first be applied to closing costs, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.

C. Debtor is authorized to execute any and all documents reasonably necessary to effectuate the sale.

D. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtor. Within fourteen days of the close of escrow, the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.

7. 13-34801-E-13 ESTHER HWANG MOTION TO CONFIRM PLAN
DCN-4 Eric Gravel 4-24-17 [88]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 24, 2017. By the court's calculation, 43 days' notice was provided. 35 days' notice is required.

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

The Motion to Confirm the Modified Plan is granted.

Esther Hwang ("Debtor") seeks confirmation of the Modified Plan because sufficient funds exist from the sale of the property to increase the lump sum and pay claims in full. Dckt. 96. The Modified Plan reduces the duration of the plan to forty-two remaining payments. Sufficient funds exist from the sale of Debtor's house to increase the final lump sum and pay claims in full. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on May 23, 2017. Dckt. 96. Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Trustee, the Plan will complete in 116 months due to Debtor not increasing a one-time lump sum payment enough to pay unsecured claims fully. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

TRUSTEE'S SUPPLEMENTAL RESPONSE

The Trustee filed a Supplemental Response on May 30, 2017. Dckt. 100. The Trustee reports that Debtor submitted an order confirming that increases the lump sum enough to pay all claims fully. The Trustee no longer opposes the Motion.

The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Modified Chapter 13 Plan filed on April 24, 2017, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

8. **17-22802-E-13** **RITA PEACH** **MOTION TO VALUE COLLATERAL OF**
GEL-1 **Gabriel Liberman** **SUNCREST BANK**
5-1-17 [8]

Final Ruling: No appearance at the June 6, 2017 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 May 1, 2017. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Motion to Value Secured Claim has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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 Secured Claim of Suncrest Bank ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $3,500.00.

The Motion filed by Rita Peach ("Debtor") to value the secured claim of Suncrest Bank ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 1984 Melroe Bobcat ("Property"). Debtor seeks to value the Property at a replacement value of $3,500.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on May 23, 2017. Dckt. 22. The Trustee states that Creditor is provided for in Class 2 of the Plan for a non-purchase money security interest incurred in July 2015.

CREDITOR'S PROOF OF CLAIM

Creditor filed a Proof of Claim on May 26, 2017. Claim No. 3. Creditor asserts that it is owed $33,494.05 and that the Property is valued at $3,500.00.

DISCUSSION

The lien on the Property secures a non-purchase-money loan incurred on July 2015 to secure a debt owed to Creditor with a balance of approximately $33,494.05. Therefore, Creditor's claim secured by a lien against the Property is under-collateralized. Creditor's secured claim is determined to be in the amount of $3,500.00, 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 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 Value Secured Claim filed by Rita Peach ("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 Suncrest Bank ("Creditor") secured by an asset described as a 1984 Melroe Bobcat ("Property") is determined to be a secured claim in the amount of $3,500.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $3,500.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

9. **17-22606-E-13** **CALVIN/TAWANA COOPER** **MOTION TO VALUE COLLATERAL OF**
RWH-1 **Ronald Holland** **PATELCO CREDIT UNION**
5-4-17 [16]

Final Ruling: No appearance at the June 6, 2017 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, parties requesting special notice, and Office of the United States Trustee on May 4, 2017. By the court's calculation, 33 days' notice was provided. 14 days' notice is required.

The Motion to Value Secured Claim has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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 Secured Claim of Patelco Credit Union ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $16,895.00.

The Motion filed by Calvin Cooper and Tawana Cooper ("Debtor") to value the secured claim of Patelco Credit Union ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2014 Chevrolet Camaro LS Coupe ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $16,895.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on May 22, 2017. Dckt. 39. The Trustee notes that Creditor filed Claim No. 2 on May 8, 2017, for the Vehicle and asserting $27,626.50 as secured and $2,922.72 in arrears.

DEBTOR'S REPLY

Debtor filed a Reply on May 30, 2017. Dckt. 49. Debtor states that the Trustee has not opposed the Motion. Debtor also stresses that no party has objected to the valuation proposed by Debtor.

DISCUSSION

The Motion asserts that the lien on the Vehicle's title secures a purchase-money loan incurred on July 14, 2014, which would be more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $27,634.31. Debtor has not provided any evidence to support that contention, however. Fortunately for Debtor, Creditor filed Claim No. 2 on May 8, 2017, and attached a copy of the loan agreement to the claim. The agreement demonstrates that the loan was incurred on July 28, 2014, which is 996 days before the petition date.

This Motion was noticed according to Local Bankruptcy Rule 9014-1(f)(1), which requires opposition to be filed no later than fourteen days before the hearing. Despite filing a Proof of Claim that asserts a different amount as its secured claim, Creditor has not opposed this Motion. 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 $16,895.00, 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 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 Value Secured Claim filed by Calvin Cooper and Tawana Cooper ("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 Patelco Credit Union ("Creditor") secured by an asset described as a 2014 Chevrolet Camaro LS Coupe ("Vehicle") is determined to be a secured claim in the amount of $16,895.00, 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 $16,895.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

10. 17-22606-E-13 RWH-2 | **CALVIN/TAWANA COOPER** **Ronald Holland** | **MOTION TO VALUE COLLATERAL OF MILESTONZ AMERICAS CREDIT JEWELER** **5-4-17 [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.

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, Creditor, parties requesting special notice, and Office of the United States Trustee on May 4, 2017. By the court's calculation, 33 days' notice was provided. 14 days' notice is required.

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

The Motion to Value Secured Claim of Milestonz America's Credit Jeweler ("Creditor") is denied without prejudice.

The Motion filed by Calvin Cooper and Tawana Cooper ("Debtor") to value the secured claim of Milestonz Americas Credit Jeweler ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a bracelet ("Property"). Debtor seeks to value the Property at a replacement value of $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'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on May 22, 2017. Dckt. 42. The Trustee contends that Debtor has not provided specific details of the property to be valued. Further, Creditor has not filed a Proof of Claim to date.

DEBTOR'S REPLY

Debtor filed a Reply on May 30, 2017. Dckt. 51. Debtor contends that Creditor sold the collateral to Debtor and is aware of the full and accurate description of the collateral. Further, there has been no Objection or Response filed by Creditor.

DISCUSSION

Debtor asserts that the lien on the Property secures a purchase-money loan incurred on December 1, 2015, which would be more than one year prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $780.00. Therefore, Creditor's claim would be under-collateralized.

This bankruptcy case was filed on April 19, 2017. The deadline for creditors filing claims is August 23, 2017. Notice of Chapter 13 Bankruptcy, Dckt. 12. However, that deadline is an impediment to Debtor being able to expeditiously confirm a Chapter 13 Plan that provides for Creditor's claim as a Class 2 (§ 506(a) valuation) claim.

The Creditor that is the target of this Motion is identified in this Motion as Milestonz Americas Credit Jeweler. Motion, Dckt. 26. As noted by the Trustee, Debtor has not provided the court with the underlying contract evidencing the obligation, identifying the creditor, showing the date of the transaction, and providing for the grant of a security interest.

Using the California Secretary's of State website for corporations and limited liability companies, the court cannot identify any entity named "Milestonz Americas Credit Jeweler" authorized to do business in California. FN.1.

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https://businesssearch.sos.ca.gov/CBS/SearchResults?SearchType=CORP&SearchCriteria=Milestonz+Americas+Credit+Jeweler&SearchSubType=Keyword

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The Certificate of Service states that the pleadings were served on Milestonz Jewelers LLC Attn: John Bubica Authorized Agent for Process of Service and Milestonz Americas Credit Jeweler. Dckt. 25. One entity is the same as named in the Motion, and the other entity name is not reported as an entity authorized to do business in California. The Secretary of State does identify as Milesonz Jewelers, LLC as registered to do business in California.

While Debtor testifies that they have listed "Milestonz Americas Credit Jeweler" on the Schedules, the court does not find that bare testimony, without any documentation, persuasive or credible. In light of the Secretary's of State information, it appears that these less sophisticated consumers have not identified who their creditor is for the claim at issue. If the court were to blindly issue the order merely because Debtor asked for it, Debtor may be in for an unhappy surprise at the end of the plan to learn that they never obtained any effective order against the real creditor.

The Motion is denied without prejudice.

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

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

11. 17-22606-E-13 RWH-3 | **CALVIN/TAWANA COOPER** **Ronald Holland** | **MOTION TO VALUE COLLATERAL OF MILESTONE AMERICAS CREDIT JEWELER** **5-4-17 [26]**

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

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, Creditor, parties requesting special notice, and Office of the United States Trustee on May 4, 2017. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Secured Claim of Milestone Americas Credit Jeweler ("Creditor") is denied without prejudice.

The Motion filed by Calvin Cooper and Tawana Cooper ("Debtor") to value the secured claim of Milestone Americas Credit Jeweler ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of wedding rings ("Property"). Debtor seeks to value the Property at a replacement value of

$1,500.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on May 22, 2017. Dckt. 36. The Trustee notes that Creditor has not filed a Proof of Claim, and that Debtor has failed to provide specific detail of the Property, such as the precious metal of the wedding rings, if gems are included, and the original purchase price.

DEBTOR'S REPLY

Debtor filed a Reply on May 30, 2017. Dckt. 53. Debtor objects to the Trustee's Opposition on the ground that the affected creditor is aware of the description of the collateral and that Debtor has stated a factual basis for the valuation. Further, Debtor states that there is no material disputed fact in this matter because the Creditor has not opposed the Motion.

DISCUSSION

Debtor asserts that the lien on the Property secures a purchase-money loan incurred on January 1, 2015, which is more than one year prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $2,835.73.

This bankruptcy case was filed on April 19, 2017. The deadline for creditors filing claims is August 23, 2017. Notice of Chapter 13 Bankruptcy, Dckt. 12. However, that deadline is an impediment to Debtor being able to expeditiously confirm a Chapter 13 Plan which provides for Creditor's claim as a Class 2 (§ 506(a) valuation) claim.

The Creditor that is the target of this Motion is identified in this Motion as Milestone Americas Credit Jeweler. Motion, Dckt. 26. As noted by the Trustee, Debtor has not provided the court with the underlying contract evidencing the obligation, identifying the creditor, showing the date of the transaction, and providing for the grant of a security interest.

Using the California Secretary's of State website for corporations and limited liability companies, the court cannot identify any entity named "Milestone Americas Credit Jeweler" authorized to do business in California. FN.1.

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https://businesssearch.sos.ca.gov/CBS/SearchResults?SearchType=LPLLC&SearchCriteria=+Milestone+Americas+Credit+Jeweler&SearchSubType=Keyword.

The Certificate of Service states that the pleadings were served on Milestonz Jewelers LLC

Attn: John Bubica Authorized Agent for Process of Service and Milestonz Americas Credit Jeweler. Dckt. 30. These entities are not the same named in the Motion. The Secretary of State does identify a Milesonz Jewelers, LLC as registered to do business in California.

While Debtor testifies that they have listed "Milestonz Americas Credit Jeweler" on the Schedules, the court does not find that bare testimony, without any documentation, persuasive or credible. In light of the Secretary's of State information, it appears that these less sophisticated consumers have not identified who their creditor is for the claim at issue. If the court were to blindly issue the order merely because Debtor asked for it, Debtor may be in for an unhappy surprise at the end of the plan to learn that they never obtained any effective order against the real creditor.

The Motion is denied without prejudice.

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

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

12. 17-21608-E-13 DPC-1 — SVETLANA PETROSYAN — Peter Macaluso — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK — 4-26-17 [16]

Final Ruling: No appearance at the June 6, 2017 hearing is required.

The Chapter 13 Trustee having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Objection to Confirmation was dismissed without prejudice, the matter is removed from the calendar, and the Chapter 13 Plan filed on March 13, 2017, is confirmed.**

Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

13. **17-21608-E-13** **SVETLANA PETROSYAN** **OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS**
DPC-2 **Peter Macaluso** **4-26-17 [20]**

Final Ruling: No appearance at the June 6, 2017 hearing is required.

The Chapter 13 Trustee, having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Objection to Claim of Exemptions was dismissed without prejudice, and the matter is removed from the calendar.**

14. **17-21809-E-13** **PAMELA BEARD HUGHES** **MOTION FOR DENIAL OF DISCHARGE OF DEBTOR UNDER 11 U.S.C. SECTION 727(A)**
DPC-1 **Mikalah Liviakis** **4-11-17 [12]**

Final Ruling: No appearance at the June 6, 2017 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, and Office of the United States Trustee on April 11, 2017. By the court's calculation, 56 days' notice was provided. 28 days' notice is required.

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

The Motion for Denial of Discharge is granted.

David Cusick, the Chapter 13 Trustee ("Objector"), filed the instant Motion for Denial of Debtor's Discharge on April 11, 2017. Dckt. 12.

Objector argues that Pamela Beard Hughes ("Debtor") is not entitled to a discharge in the instant bankruptcy case because Debtor previously received a discharge in a Chapter 7 case.

Debtor filed a Chapter 13 bankruptcy case on January 15, 2016, and the case was converted to a Chapter 7 on December 22, 2016. Case No. 16-20227. Debtor received a discharge on April 4, 2017. Case No. 16-20227, Dckt. 115.

The instant case was filed under Chapter 13 on March 20, 2017.

11 U.S.C. § 727(a)(8) provides that a court shall not grant a discharge if a debtor has received a discharge in a case filed under chapter 7 or 11 within eight years before the filing date of the instant case. 11 U.S.C. § 727(a)(8).

Here, Debtor received a discharge under 11 U.S.C. § 727 on April 4, 2017, which is less than eight years preceding the date of the filing of the instant case. Case No. 16-20227, Dckt. 115. Therefore, pursuant to 11 U.S.C. § 727(a)(8), Debtor is not eligible for a discharge in the instant case.

Therefore, the Motion is granted. Upon successful completion of the instant case (Case No. 17-21809), the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Denial of Discharge filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion for Denial of Discharge is granted, and upon successful completion of the instant case, Case No. 17-21809, the case shall be closed without the entry of a discharge.

15. 12-37010-E-13 BLG-8 | **LITO/ANNA SAJONAS** **Chad Johnson** | **MOTION FOR COMPENSATION BY THE LAW OFFICE OF BANKRUPTCY LAW GROUP, PC FOR CHAD M. JOHNSON, DEBTORS' ATTORNEY(S) 4-21-17 [160]**

Final Ruling: No appearance at the June 6, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 21, 2017. By the court's calculation, 46 days' notice was provided. 28 days' notice is required.

The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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.

Chad Johnson, of the Bankruptcy Law Group, PC, the Attorney ("Applicant") for Lito Sajonas and Anna Sajonas, 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 August 23, 2016, through March 31, 2017. Applicant requests fees in the amount of $1,470.00 and costs in the amount of $36.38.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on May 22, 2017. Dckt. 172. The Trustee states that the Motion includes discussion with Debtor about selling property, but Applicant does not appear to have charged for it. The docket does not include any motion to sell property, and the Trustee's cursory internet search did not reveal any recent sale.

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.

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

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 the services provided by Applicant related to the estate enforcing rights and obtaining benefits including modifying Debtor's plan after unexpected medical expenses. The court finds the services were beneficial to the Client and bankruptcy 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).

An Order Confirming the Second Amended 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. 127. 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 Modify Plan: Applicant spent 3.4 hours in this category. Applicant assisted Client with proposing a modified plan after there were unexpected medical expenses and changes to income.

Motion for Approval of Professional Fees: Applicant spent 1.0 hours in this category. Applicant prepared the instant 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 correct 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**
Chad Johnson, attorney	4.2 hours	$350.00	$1,470.00
Total Fees for Period of Application			$0.00

Applicant's Incorrect Time Sheet

In the Motion, Applicant requests fees in the amount of $1,470.00. Applicant provided a time sheet as Exhibit A. Dckt. 163. The time sheet states that the total hours are 4.4, with 3.4 being billed for a motion to modify plan and 1.0 not being billed for preparing this Motion. Chad Johnson is listed as performing all of the work related to the "3.4" hours for the motion to modify the plan, and "TP" is listed as preparing this Motion. The court has not been presented with the identity of "TP," but that failure will not be fatal to this Motion because the one hour of work has not been billed. Also, tallying the hours related to the motion to modify plan does not equal 3.4: The total should be 4.2 hours. 4.2 hours of work performed at $350.00 per hour equals $1,470.00, which is what Applicant has requested in this Motion.

Despite the errors in the time sheet, Applicant has requested the correct amount based upon a tally of the hours performed and billed for individual matters, all related to the motion to modify plan.

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $36.38 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Postage		$22.78
Copying		$13.60
		$0.00
		$0.00
Total Costs Requested in Application		$36.38

FEES AND COSTS & EXPENSES ALLOWED

Fees

The unique facts surrounding the case, including proposing a 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 fees in the amount of $1,470.00 is approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

Costs & Expenses

Costs in the amount of $36.38 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

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

Fees	$1,470.00
Costs and Expenses	$36.38

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 Chad Johnson, of the Bankruptcy Law Group, PC ("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 Chad Johnson, of the Bankruptcy Law Group, PC, is allowed the following fees and expenses as a professional of the Estate:
>
> Fees in the amount of $1,470.00
> Expenses in the amount of $36.38,
>
> as the additional allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 13 Debtor.

IT IS FURTHER ORDERED that the 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.

16. 12-37010-E-13 LITO/ANNA SAJONAS MOTION TO MODIFY PLAN
BLG-9 Chad Johnson 5-1-17 [165]

Final Ruling: No appearance at the June 6, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 1, 2017. By the court's calculation, 36 days' notice was provided. 35 days' notice is required.

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Debtor has filed evidence in support of confirmation. The Chapter 13 Trustee filed a Response indicating non-opposition on May 23, 2017. Dckt. 174. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

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

IT IS ORDERED that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on May 1, 2017, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

17. 16-24111-E-13 DMW-3 | **ABBIGAIL CLYMER** **R. Randall Ensminger** | **MOTION TO SELL** **5-1-17 [151]**

Final Ruling: No appearance at the June 6, 2017 hearing is required.

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

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

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

The Motion to Sell having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is dismissed as moot, the case having been dismissed.

18. 17-22021-E-13 CYNTHIA WIGART
John Downing

OBJECTION TO CONFIRMATION OF PLAN BY DEUTSCHE BANK NATIONAL TRUST COMPANY
4-24-17 [17]

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

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

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

Sufficient Notice Not Provided. No Proof of Service has been filed indicating that the necessary parties were served with notice of this Objection. 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 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing ----------.

The Objection to Confirmation of Plan is overruled without prejudice.

Deutsche Bank National Trust Company, as Trustee for GSAA Home Equity Trust 2006-11, Asset-Backed Certificates, Series 2006-11, through its authorized loan servicing agent Ocwen Loan Servicing, Creditor with a secured claim, opposes confirmation of the Plan on the basis that the Plan improperly modifies a claim secured by Debtor's principal residence.

INSUFFICIENT NOTICE PROVIDED

Creditor has not filed a Proof of Service for this Objection, however. The court does not have any proof that the necessary parties have been served with notice of this Objection. Therefore, the Objection is overruled without prejudice. FN.1.

FN.1. The rejection of this objection may be but a Pyrrhic victory for Debtor. If this asserted creditor is correct and an unprovided for arrearage exists, the court can envision shortly seeing a motion for relief from the stay. At that point, Debtor and counsel would have to prepare a modified plan, motion to confirm

modified plan, evidence to support the modified plan, notice a hearing, and conduct a hearing on the proposed modified plan. Any such proceedings because of the unprovided for cure of the arrearage would be clearly anticipated work to be covered by the no-look fee and likely not be reasonable additional costs and expenses if counsel has chosen to opt out of the no-look fee.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by a creditor with 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 overruled without prejudice.

THE COURT HAS PREPARED THE FOLLOWING ALTERNATIVE RULING IF CREDITOR FILES A PROOF OF SERVICE INDICATING THAT ALL NECESSARY PARTIES HAVE BEEN SERVED TIMELY

Creditor argues that Debtor's Plan was not filed in good faith and is an improper modification of a claim secured only by a security interest in real property that is Debtor's principal residence. Creditor has not filed a Proof of Claim indicating a secured claim and has not provided a deed of trust against the property commonly known as 1694 Arapahoe Street, South Lake Tahoe, California. Debtor's Schedules indicate that this is Debtor's primary residence.

Creditor asserts that its claim is approximately $272,301.07, but Creditor has not provided any evidence of that claim to the court.

The Plan provides for a claim of Ocwen Loan Servicing's claim in Class 2 in the amount of $78,803.76. While Ocwen Loan Servicing, LLC may be loan servicer for Creditor, there is nothing to indicate that Debtor is attempting to modify any rights of Creditor—only the claim of Ocwen Loan Servicing.

Debtor does not intend to and does not seek to include any claim of Creditor in the bankruptcy plan. FN.1.

FN.1. The rejection of this objection may be but a Pyrrhic victory for Debtor. Debtor not having provided for Creditor's claim, the court can envision shortly seeing a motion for relief from the stay. If Debtor then decides that the claim of Creditor should be provided for in the plan, rather than merely the claim of some loan servicer, Debtor and Debtor's counsel would have to prepare a modified plan, motion to confirm modified plan, evidence to support the modified plan, notice a hearing, and conduct a hearing on the proposed modified plan. Any such proceedings would

be clearly anticipated work to be covered by the no-look fee and likely not be reasonable additional costs and expenses on top of the no-look fee or reasonable additional fees if counsel has opted out of the no-look fee.

There being no evidence to support Creditor's argument, the Objection is overruled.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by a creditor with 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 overruled.

19. 17-22021-E-13 DPC-1 | **CYNTHIA WIGART** **John Downing** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **5-9-17 [19]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on May 9, 2017. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the 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.

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

A. Debtor is delinquent in plan payments.

B. Debtor may not be able to make plan payments or comply with the Plan.

C. Debtor's plan fails the Chapter 7 liquidation analysis.

D. Debtor fails to provide her full legal name on the petition.

The Trustee's objections are well-taken.

The Trustee asserts that Debtor is $135.00 delinquent in plan payments, which represents one month of the $135.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor's plan relies on a Motion to Value Collateral of Ocwen Loan Servicing, but Debtor has not filed that motion. Debtor's plan does not have sufficient monies to pay the claim. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Debtor's plan fails the Chapter 7 liquidation analysis under 11 U.S.C. §1325(a)(4). Debtor's non-exempt equity totals $8,200.00, and Debtor is proposing a 1% dividend to unsecured claims, or approximately $1,080.00 to unsecured claims. Non-exempt assets include $7,800.00 from a Ford F350 and $400.00 from a snowblower.

Debtor failed to provide her full legal name on the petition filed on March 28, 2017. At the Meeting of Creditors held on May 4, 2017, Debtor's identification card listed the name Cynthia Christine Wigart. The petition lists Cynthia C. Wigart.

DEBTOR'S RESPONSE

Debtor filed a late Response on June 1, 2017. Dckt. 30. Debtor asserts that she is current on plan payments, that she has filed a motion to value secured claim, that she has amended Schedules A, B, and C, and that she has amended the petition to include her middle name.

DISCUSSION

Despite filing her Response late, Debtor appears to have cured three out of four of the Trustee's grounds. At the hearing, the Trustee reported that Debtor is ~~no longer delinquent~~.

Lack of Real Parties in Interest Before the Court

In the Chapter 13 Plan Debtor purports to provide for a secured claim of Ocwen Loan Servicing. Class 2, Dckt. 5. However, it is commonly known that Ocwen Loan Servicing, LLC provides third-party loan servicing work for the banks, financial institutions, trustees, and other investors who are the actual creditors. Debtor has not provided the court with anything to show that in this one case Ocwen Loan Servicing, LLC is actually a creditor.

The court does not issue orders in the names of mere "placeholders." It would be a sad day for Debtor, Debtor's counsel, and Debtor's counsel's E&O insurer if the court were to blindly confirm a plan that purported to provide for treatment against a mere "placeholder." After five years of performing a bankruptcy case, Debtor and Debtor's counsel would have the "pleasure" of then having to provide for a creditor whose claim was never valued and whose claim was never provided for in the Chapter 13 Plan.

The court notes that on June 1, 2017, Debtor filed a motion to value the secured claim of "Ocwen Loan Servicing" at $0.00. As stated above, it is common knowledge that Ocwen Loan Servicing, LLC

(presuming that is who Debtor is referencing in the motion and not an "Ocwen Loan Servicing, Inc," or "Ocwen Loan Servicing, LP," or "Ocwen Loan Servicing, a federally chartered financial institution) is merely the loan servicer for the actual creditor. Valuing a secured claim of "Ocwen Loan Servicing" would be having the court issue a constitutionally void order against a person who was not the real party in interest (the creditor).

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is sustained, and Debtor's Chapter 13 Plan filed on March 28, 2017, is not confirmed.

20. 17-21624-E-13 DPC-1 | **ELIEZER/EVANGELINE DELMENDO** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK**
Joseph Canning | **5-3-17 [87]**

Final Ruling: No appearance at the June 6, 2017 hearing is required.

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 and Debtor's Attorney on May 3, 2017. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

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

The Objection to Confirmation is overruled as moot, the proposed plan having been dismissed by Debtor.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Objection, Eliezer Delmendo and Evangeline Delmendo ("Debtor") filed a First Amended Plan and corresponding Motion to Confirm on May 30, 2017. Dckts. 105 & 109. Additionally, the court sustained objections to confirmation of the prior plan. Dckts. 102 & 104. The Objection to Confirmation is overruled as moot, and the plan is not confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Confirmation filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled as moot, Debtor having dismissed the proposed plan by filing an amended plan, with the proposed Chapter 13 Plan not confirmed.

21. 17-20725-E-13 MRL-2 | **DAVID BOUNSAVANG** **Mikalah Liviakis** | **MOTION TO CONFIRM PLAN 4-11-17 [18]**

Final Ruling: No appearance at the June 6, 2017 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 11, 2017. By the court's calculation, 56 days' notice was provided. 35 days' notice is required.

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Debtor has filed evidence in support of confirmation. The Chapter 13 Trustee filed a Non-Opposition on May 22, 2017. Dckt. 28. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

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

IT IS ORDERED that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on April 11, 2017, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

22. 17-21425-E-13 DPC-1 | **JESSIAH WILLARD** **Pro Se** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 4-26-17 [35]**

Final Ruling: No appearance at the June 6, 2017 hearing is required.

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

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

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

The Objection to Confirmation having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled as moot, the case having been dismissed.

23. **17-21525-E-13** **CHERI GOETZ** **OBJECTION TO CONFIRMATION OF PLAN BY CREDITOR CAPITAL ONE, N.A.**
PPR-1 **Eric Vandermey** **4-27-17 [35]**

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, and Office of the United States Trustee on April 27, 2017. By the court's calculation, 40 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 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing **----------.**

The Objection to Confirmation of Plan is sustained.

Capital One, N.A., Creditor with a secured claim, opposes confirmation of the Plan on the basis that the Plan does not pay Creditor's secured claim fully and is not feasible because it does not include an arrearage dividend.

Creditor's objections are well-taken. The objecting creditor holds a deed of trust secured by Debtor's residence. *See* Exhibits, Dckt. 39. Creditor provides the declaration of Casey Kehr as evidence of the asserted claim. Dckt. 38. The Plan does not propose to cure those arrearages. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearages.

Creditor alleges that the Plan is not feasible. 11 U.S.C. § 1325(a)(6). The proposed payment of $120.00 for thirty-six months will not cure Creditor's secured claim. Thus, the Plan may not be confirmed.

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

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

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

24. **17-21525-E-13** **CHERI GOETZ** **OBJECTION TO CONFIRMATION OF**
DPC-1 **Eric Vandermey** **PLAN BY DAVID P. CUSICK**
4-26-17 [30]

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 26, 2017. By the court's calculation, 41 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 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 hearing on the Objection to Confirmation of Plan is continued to 3:00 p.m. on June 13, 2017.

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

A. The Plan relies on a pending Motion to Value the Secured Claim of Trinity Financial Services on June 13, 2017.

B. Debtor cannot afford the plan payment.

The Trustee's objections are well-taken.

Debtor proposes to value the secured claim of Trinity Financial Services, LLC, for a Second Deed of Trust, to reduce the secured claim from $71,339.00 to $0.00. That Motion to Value has been continued to 3:00 p.m. on June 13, 2017.

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor admitted at the First Meting of Creditors held on April 20,2017, that she failed to list an expense on Schedule J for real estate taxes and insurance. Debtor stated that her insurance expense was $78.00 per month and her real property tax was $3,800.00 per year, which is $316.67 per month. Debtor is proposing a plan payment of $120.00 per month for thirty-six months. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

The motion to value that is referenced in the Trustee's Objection is scheduled to be heard at 3:00 p.m. on June 13, 2017. Continuing this matter to be heard in conjunction with that motion is appropriate to fully rule on this Objection. The hearing is continued to 3:00 p.m. on June 13, 2017.

Continuing the hearing will also allow Debtor to address the Trustee's concerns relating to feasibility.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Chapter 13 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 hearing on the Objection to Confirmation of the Plan is continued to 3:00 p.m. on June 13, 2017.

25. **17-21526-E-13 DPC-1** | **DAVE LEYTO** **Eric Vandermey** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **4-26-17 [16]**

Final Ruling: No appearance at the June 6, 2017 hearing is required.

The Chapter 13 Trustee having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Trustee's Objection to Confirmation was dismissed without prejudice, and the matter is removed from the calendar**, **and the Chapter 13 Plan filed on March 8, 2017, is confirmed.**

Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

26. **17-20130-E-13** **BARBARA MYERS** **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY WILMINGTON SAVINGS FUND SOCIETY, FSB**
ASW-1 **Chinonye Ugorji** **2-16-17 [17]**

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the 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, and Chapter 13 Trustee on February 16, 2017. By the court's calculation, 33 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

Wilmington Savings Fund Society, FSB, d/b/a Christiana Trust, as indenture trustee, for the CSMC 2015-RPL1 Trust, Mortgage-Backed Notes, Series 2015-RPL1, Creditor with a secured claim, opposes confirmation of the Plan on the basis that:

A. Debtor failed to provide for the full arrearage of Creditor's claim, and

B. Debtor's Plan is not feasible because there is insufficient income to fund the Plan.

DEBTOR'S RESPONSE

Barbara Myers ("Debtor") filed a Response on March 6, 2017. Dckt. 21. Debtor asserts that Creditor's claim for arrearages of $23,393.23 is incorrect because Debtor and Creditor entered into an

agreement in September 2016, by which Debtor agreed to pay $3,142.00 for twelve months to cure arrears of $10,318.82. Debtor asserts that now, the arrears are "at best $10,360.00."

MARCH 21, 2017 HEARING

At the hearing, the court continued the matter to 3:00 p.m. on June 6, 2017. Dckt. 23.

CREDITOR'S PROOF OF CLAIM

Creditor filed a Proof of Claim on May 10, 2017. Claim No. 15. The total amount of the claim is $526,494.51, secured by property, and $23,293.23 is listed in arrears. Creditor included an Adjustable Rate Note as part of its claim, and that Note was signed by Debtor and dated August 8, 2006.

Creditor also included the original Deed of Trust and two assignments, showing the following path:

A. Issued to BankUnited FSB;

B. Assigned to DLJ Mortgage Capital, Inc. c/o Select Portfolio Servicing, Inc.; and

C. Assigned to Wilmington Savings Fund Society, FSB, d/b/a Christiana Trust, as Indenture Trustee, for the CSMC 2015-RPL1 Trust, Mortgage-Backed Notes, Series 2015-RPL1.

DISCUSSION

The objecting Creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a proof of claim asserts $23,293.23 in pre-petition arrearages. Debtor's plan proposes to cure arrearages in the amount of $9,200.00. A plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments if 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).

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor's Schedule J indicates that Debtor has a disposable income of $2,547.77. Creditor notes that Debtor will need to pay a minimum of $388.22 per month to cure the Creditor's pre-petition arrears over the life of the Plan. Creditor asserts that according to Debtor's Schedules I & J and pre-petition arrearage payments, there is insufficient income to fund the Plan.

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

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

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

The Objection to the Chapter 13 Plan filed by a Creditor with 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.

27. 16-25332-E-13 MET-3 | **STEPHEN/LESLEE FOURNIER** **Mary Ellen Terranella** | **MOTION TO CONFIRM PLAN 4-18-17 [114]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on April 18, 2017. By the court's calculation, 49 days' notice was provided. 42 days' notice is required.

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.

Stephen Fournier and Leslee Fournier ("Debtor") seek confirmation of the Amended Plan to account for a higher-than-anticipated claim by the Franchise Tax Board and to adjust for home repair expenses. Dckt. 114. The Amended Plan increases plan payments to $2,452.00 beginning with the May 2017 payment and includes a 1.00% dividend to unsecured claims. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on May 22, 2017. Dckt. 125. The Trustee objects to the treatment of student loans in the Plan. The Trustee believes that Debtor wants to pay student loans outside of the Plan, but he notes that such treatment is not called for in the additional provisions. The result is that the student loan claim (Claim No. 5 for $325,492.26) will be paid 1% under the Plan and will be paid directly as well.

DEBTOR'S REPLY

Debtor filed a Reply on May 26, 2017. Dckt. 128. Debtor states that an Order Confirming was submitted to the Trustee for review, and that proposal includes in the additional provisions that the student loan will be paid directly outside of the Plan and not as a Class 7 claim. *See* Exhibit A, Dckt. 129.

DISCUSSION

The court has reviewed the proposed order confirming. It would appear that the amendment would resolve part of the Trustee's Opposition.

However, Opposition raises another issue for the court—the undisclosed potentially preferential payments being made to the holder of one Class 7 claim to the prejudice of the other creditors. 11 U.S.C. § 1322(a)(3) requires that the treatment be the same for all creditors within each class of claims. The court may confirm a plan that has multiple classes of unsecured claims, so long as such classification does not unfairly discriminate as to one class against the other. 11 U.S.C. § 1322(b)(1).

In the proposed plan, Debtor is only able to make a 1% dividend distribution to creditors holding general unsecured claims. Plan, Class 7; Dckt. 118. For the estimated $244,071.00 in Class 7, the total projected monies to distribute to Class 7 claims is $2,447.00.

What the Trustee discloses is that there is also a $325,492.26 general unsecured claim owed to "CornerStone Educations Loan Services." Opposition, Dckt. 125. On the current statement of Debtor's expenses (using the Schedule J form), Debtor reports having $2,452.00 in Net Monthly Income. Exhibit C, Dckt. 117 at 11. No provision is made on the statement of expenses for any payments to be made on the CornerStone unsecured claim outside the Chapter 13 Plan.

In responding to the Trustee's Opposition, Debtor does not provide any testimony under penalty of perjury or testimony explaining how payments on the CornerStone unsecured claim can be made by Debtor outside the Plan. Rather, Debtor merely has counsel argue that Debtor will make the payment outside the plan. Reply, p. 2:7.5–11; Dckt. 128.

The court has no idea what Debtor will be paying CornerStone during this case and whether such payments will be in excess of 1% of its unsecured claim. Debtor offers the court no evidence that there is a forbearance on any payments to CornerStone during the term of this Plan. All Debtor offers is that Debtor will pay unstated amounts to CornerStone, such amounts are not disclosed, and in substance, "Whatever Debtor wants to pay CornerStone is none of the other creditor's, Chapter 13 Trustee, or court's business."

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan 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 denied, and Debtor's Amended Chapter 13 Plan is not confirmed.

28. 16-25534-E-13 GENTRY/MARIA LONG MOTION TO MODIFY PLAN
PGM-1 Peter Macaluso 4-27-17 [24]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on April 27, 2017. By the court's calculation, 40 days' notice was provided. 35 days' notice is required.

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.

Gentry Long and Maria Long ("Debtor") seek confirmation of the Modified Plan because they have received bonuses and have increased dental costs. Dckt. 24. The Modified Plan proposes payments of $316.00 for the first eight months and $350.00 for the remaining fifty-two months beginning with the May 2017 payment. The Plan also calls for submitting up to $2,000.00 per year in tax refunds on or before May 1. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

Debtor filed a Joint Declaration that includes the statements: "Won $12,439 once last year and lost it. And I am not gambling anymore. I learned my lesson." Dckt. 26.

DEBTOR'S SUPPLEMENTAL DECLARATION

Debtor Maria Long filed a Supplemental Declaration on May 23, 2017. Dckt. 32. Ms. Long states that she scheduled an appointment on May 10, 2017, with Kaiser Permanente for assistance with her gambling problem. She states that she will remain in treatment.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on May 23, 2017. Dckt. 34. The Trustee states that he is not certain that the Modified Plan has been proposed in good faith. 11 U.S.C. § 1325(a)(3). For instance, the Trustee notes that the Modified Plan proposes to limit contribution from tax refunds to no more than $2,000.00 per year, but a prior order confirming plan had provided for all refunds to be paid.

The Trustee emphasizes that Debtor has a history of gambling, with Debtor's bank statements from February 2016 to July 2016 showing that Debtor gambled approximately $32,116.43 between January 2016 and July 2016 during the pendency of prior case No. 14-27989. Debtor's 2016 tax return reveals gambling winnings of $12,439.00 and losses of $12,439.00.

The Trustee requested and reviewed copies of Debtor's bank statements for November 2016 through April 2017. The Trustee's review of the statements showed that Debtor continues to gamble. The Trustee calculated that Debtor spent $19,595.01 between November 21, 2016, and April 22, 2017, and the bank statements do not show any transactions, deposits, purchases, or withdrawals between December 21, 2016, and January 23, 2017. *See* Exhibit A, Dckt. 36.

The 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 47% dividend to unsecured claims, which total $26,806.54, though Debtor's projected disposable income under 11 U.S.C. § 1325(b)(2) totals $4,916.96. The Trustee reviewed six months of bank statements and found that the average net deposit is $6,150.33 per month—a difference of $1,233.37 per month. If Debtor contributed the full disposable income, then the Plan would complete fully in less than sixty months. Thus, the court may not approve the Plan.

The Trustee questions how much Debtor proposes to make in monthly payments. The Plan calls for $350.00, but Debtor's Declaration states $375.00. *Compare* Dckt. 26, *with* Dckt. 28. Also, the Trustee is not sure how the Plan can provide $1,500.00 yearly to be paid to attorney's fees when the full tax refunds are not being contributed. The Plan also reduces attorney's fees from $4,000.00 to $3,510.00 without explanation.

DEBTOR'S REPLY

Debtor filed a Reply on May 30, 2017. Dckt. 38. Debtor requests a continuance of the hearing to allow Debtor and counsel to discuss the Trustee's Opposition and respond.

DISCUSSION

Debtor has requested a continuance of this hearing without giving the court a good reason. The Trustee's Opposition was filed timely, and Debtor has not provided the court with any explanation about why there has been insufficient time to respond adequately. The court does not continue hearings merely because a continuance has been requested by one party without providing a reason why.

Debtor has serious issues to address. While admitting to having improperly diverted assets and having additional income, Debtor has taken the aggressive step of providing that if Debtor has taxes overwithheld, then Debtor can pocket all of the overwithholding above $2,000.00. This creates a perverse incentive for Debtor to continue to cheat the system and put in place a mechanism to fund future gambling, as well as improperly divertiprojected disposable income into Debtor's pocket.

The bankruptcy process and seeking confirmation of a plan is not a "game" in which parties can take unreasonable, non-legally supportable positions, break the law, and then get a delay do-over.

If Debtor desires to comply with the law, then Debtor can file a new plan, a new motion to confirm, and support it with competent evidence. It is clear that this Motion and the proposed Plan were DOA on filing and not proposed in good faith.

The Trustee has demonstrated is that the Modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329, and it is not confirmed.

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

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

29. **17-22742-E-13** **SHARON DONNELL** **MOTION TO VALUE COLLATERAL OF**
MRL-1 **Mikalah Liviakis** **SAFE CREDIT UNION**
4-25-17 [9]

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, Creditor, and Office of the United States Trustee on April 26, 2017. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Secured Claim of Safe Credit Union ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $7,839.00.

The Motion filed by Sharon Donnell ("Debtor") to value the secured claim of Safe Credit Union ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2006 Volvo XC90 ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $7,839.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on May 22, 2017. Dckt. 18. The Trustee states that Debtor has failed to provide more specific information on the style of the vehicle, such as whether it is a 2.5T Sport Utility, a V8 Sport Utility, or a V8 Ocean Race Ed Sport Utility.

The Trustee notes that Creditor has not filed a proof of claim, and he is not sure if Debtor has described the Vehicle in sufficient detail.

PROOF OF CLAIM

Creditor filed a Proof of Claim for the Vehicle on May 25, 2017, showing the secured amount of the claim to be $7,839.00 and the unsecured amount of the claim to be $11,049.70. Claim No. 4.

DEBTOR'S SUPPLEMENTAL DECLARATION

Debtor filed a Supplemental Declaration on May 31, 2017, stating that the Vehicle's model type is a V8 Sport Utility. Dckt. 26.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on July 16, 2014, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $19,572.00. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of $7,839.00, the value of the collateral and Creditor's secured claim on Proof of Claim No. 4. *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 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 Value Secured Claim filed by Sharon Donnell ("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 Safe Credit Union ("Creditor") secured by an asset described as 2006 Volvo XC90 ("Vehicle") is determined to be a secured claim in the amount of $7,839.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $7,839.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

30. **16-26043-E-13** **SUSAN GEDNEY** **MOTION TO EMPLOY JCL REALTY, INC. AS REALTOR**
TAG-5 **Aubrey Jacobsen** **4-11-17 [99]**

APPEARANCE OF TED GREENE, AUBREY JACOBSEN, SUSAN GEDNEY, AND DAWN ROBINSON REQUIRED FOR THE JUNE 6, 2017 HEARING

NO TELEPHONIC APPEARANCES PERMITTED

Final Ruling: No appearance at the June 6, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 11, 2017. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The hearing on the Motion to Employ is continued to 11:00 a.m. on June 15, 2017 (specially set to the court's Chapter 7-11-12 calendar).

Susan Gedney ("Debtor") seeks to employ realtor Dawn Robinson of JCL Realty, Inc., pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Debtor seeks the employment of a realtor to assist with short selling her property.

Debtor argues that the realtor's appointment and retention is necessary because the Chapter 13 Plan contemplates the short sale of her property.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on April 25, 2017. Dckt. 105. The Trustee states that there is a pending adversary proceeding (No. 17-02006) dealing with a prior real estate listing agreement between Debtor and realtor Sarah Wright and broker Gabriel Witkin.

The Trustee notes that JCL Realty, Inc. is owned by Ted Greene who is also the owner of Law office of Ted A. Greene, Inc., who represents Debtor in this Chapter 13 case.

The Trustee does not oppose the Motion.

MAY 9, 2017 HEARING

At the hearing, the court continued the matter to 10:00 a.m. on May 31, 2017, specially set with the court's Chapter 13 dismissal calendar. Dckt. 119. The court ordered Ted Greene, Aubrey Jacobsen, Susan Gedney, and Dawn Robinson to appear personally at the continued hearing. The court suspended the application of Federal Rule of Civil Procedure 41(a)(1) and Federal Rule of Bankruptcy Procedure 7041 as made applicable to contested matters by Federal Rule of Bankruptcy Procedure 9014(c), with dismissal of the Motion only by court order.

ORDER CONTINUING HEARING

On May 9, 2017, the court granted Debtor's *ex parte* request for the hearing to be continued, and the court continued the hearing to 3:00 p.m. on June 6, 2017. Dckt. 116.

MAY 31, 2017 HEARING

Due to a mistake, the continued hearing was set for the May 31, 2017 calendar and the June 6, 2017 calendar. At the May 31, 2017 hearing, the court announced that the matter would be heard on June 6, 2017, and the court reissued its order to appear and reannounced suspension of Federal Rule of Civil Procedure 41(a)(1) and Federal Rule of Bankruptcy Procedure 7041.

DISCUSSION

Dawn Robinson, realtor with JCL Realty, Inc., testifies that she and the company do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with the debtors, creditors, the U.S. Trustee, any party in interest, or their respective attorneys. She testifies that her fee for selling Debtor's property will be 3.5% of the purchase price.

This case has had an interesting dynamic in which the real estate broker that Debtor hired pre-petition was determined post-petition to "not be qualified." No mention was made during the long, multiple hearings that the new, better realtor was one owned by Debtor's attorney, Ted Greene. Though Mr. Greene has a new, young associate appearing as attorney of record in this case, it is his law firm that has Debtor as the client. Mr. Greene's name appears on all the pleadings.

The court is concerned whether Mr. Greene and his firm can fulfill their duties as counsel to the Debtor, who is the fiduciary to the bankruptcy estate and will be the fiduciary under a Chapter 13 Plan (if one can be confirmed). The court is unsure how Mr. Greene and his firm can represent Debtor and advise Debtor as to the performance by Mr. Greene's real estate company, advocating for her with Mr. Greene's real estate company.

The pleadings also do not contain evidence showing compliance with California Rule of Professional Conduct 3-300.

Debtor filed a Motion to Sell Property on May 30, 2017, with JCL Realty, Inc., included as the listing agent. Dckt. 120; Exhibit A, Dckt. 124. Debtor states in that Motion that she has withdrawn the Motion to Employ JCL Realty, Inc., however, and will be filing a new motion to employ another realtor. Despite Debtor stating that she has withdrawn the present Motion, the court has suspended the use of Federal Rule of Civil Procedure 41(a)(1), and Debtor will not be able to withdraw this Motion without court approval.

31. 17-20943-E-13 DPC-2 | **MARTHA RAMIREZ** **Peter Macaluso** | **OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS** **4-11-17 [30]**

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 and Debtor's Attorney on April 11, 2017. By the court's calculation, 56 days' notice was provided. 28 days' notice is required.

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

The Objection to Claimed Exemptions is overruled.

The Trustee objects to Martha Ramirez's ("Debtor") claimed exemptions under C.C.P. § 703.140(b) and other exempts claimed under C.C.P. § 704. The Trustee argues that Debtor cannot claim exemptions under both sections because C.C.P. § 703.140(a) states that the subsection (b) exemptions "may be elected in lieu of all other exemptions provided by this chapter."

DEBTOR'S REPLY

Debtor filed a Reply on May 23, 2017. Dckt. 63. Debtor states that she will file an Amended Schedule C before the hearing on the Objection.

DISCUSSION

Debtor filed an Amended Schedule C on May 23, 2017. Dckt. 65. Debtor no longer claims exemptions under both mutually exclusive provisions of the California Code of Civil Procedure. The Trustee's ground having been resolved, this Objection is overruled.

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 Claimed Exemptions filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection is overruled, Debtor having filed an Amended Schedule C, rendering the Objection moot and the prior claim of exemption withdrawn.

32. **15-22747-E-13 PLC-6** | **GARY/VICTORIA TEDFORD** **Peter Cianchetta** | **MOTION FOR COMPENSATION FOR PETER CIANCHETTA, DEBTORS' ATTORNEY** **4-24-17 [79]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on April 24, 2017. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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 denied without prejudice.

Peter Cianchetta, the Attorney ("Applicant") for Gary Tedford and Victoria Tedford, the Chapter Debtor ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period May 18, 2015, through April 10, 2017. Applicant requests fees and costs in the amount of $5,439.51.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on May 22, 2017. Dckt. 88. The Trustee opposes the Motion because Applicant states that a time sheet has been submitted for review as Exhibit 1, but no such exhibit has actually been filed. The Trustee cannot determine if the fees sought are reasonable and necessary.

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.

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An attorney must exercise good billing judgment with regard to the services provided because the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery," as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat'l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913

n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is mandatory."). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

REVIEW OF PLEADINGS

The court's review of the Motion shows that there are more problems than just the one that the Trustee raised—there being no time sheets filed as Exhibit 1, even though the Motion references that exhibit specifically.

From the court's review of the Motion, the court is unable to determine how the various monetary amounts referenced add up. Applicant requests $5,439.51 for fees and costs, states that he received $500.00 pre-petition, and states that the total fees and costs in this case are $5,564.51. The court's initial thought is that the total amount of fees and costs in this case should equal $5,939.51, $375.00 more than Applicant states.

Second, the sub-totals cited in the Motion do not equal the amount requested. Applicant lists $4,617.50 for 16.0 hours of pre-petition work, $1,225.00 for 2.5 hours of post-petition work, and $72.01 in costs. Those amounts total $5914.51, which is neither the amount Applicant requests, nor is it the amount Applicant states should be the total in this case for fees and costs.

Additionally, the hours billed do not match other hours listed in the Motion. Applicant provides a billing analysis that totals 19.50 hours, but the task billing portion of the Motion totals 18.50 hours of work. Apparently, Applicant has billed for an additional hour of work.

DENIAL WITHOUT PREJUDICE OF MOTION

As presented to the court, this Motion is not clear about the various amounts billed and received in this case, and Applicant has not attached the time sheets described in the Motion. Applicant can fix the various errors in a new motion. This Motion is denied without prejudice.

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

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

The Motion for Allowance of Fees and Expenses filed by Peter Cianchetta ("Applicant"), Attorney for 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 is denied without prejudice.

33. 15-24851-E-13 TJW-3 | **WALTER ALLEN** **Timothy Walsh** | **MOTION BY TIMOTHY J. WALSH TO WITHDRAW AS ATTORNEY 5-10-17 [51]**

No Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on May 10, 2017. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

The Motion to Withdraw as Attorney was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and 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 Withdraw as Attorney is xxxxx.

Timothy Walsh ("Movant"), attorney of record for Walter Allen, Jr. ("Debtor"), filed a Motion to Withdraw as Attorney as Debtor's counsel in the bankruptcy case. Movant states the following:

1. The Motion is brought pursuant to Local Bankruptcy Rule 2017-1(e) and California Rule of Professional Conduct 3-700(C)(1).

2. Debtor and Movant cannot agree upon a course of proceeding in this case.

3. There are matters that Movant believes are confidential and must be kept so pursuant to Business and Professions Code 6068(3), Rule 3-100(A), California Rules of Professional Conduct, and by the attorney-client privilege.

4. If the court desires further information about the matters to determine whether this Motion is brought in good faith, then Movant requests an *in camera* hearing.

DEBTOR'S RELATED PLEADING

Debtor filed a Request for a Motion to Reschedule relating to the Chapter 13 Trustee's Motion to Dismiss that was set for hearing on May 31, 2017. Dckt. 57. Debtor states that Movant seeks withdrawal "due to errors [Debtor] discovered in [his] Chapter 13 case that [Movant] feels has no bearing on the case." *Id.* Debtor states that he asked Movant to correct the following perceived errors:

A. "Over-stated income in 2015 my salary for 2015 was $88,639. I grossed $93,242.40 (OT included) divided by 12 months =$7,770.20 not the listed $8,434.70. My current salary is $95,330.00 dollars per year divide that by 12 months $7,914.16 still less than the plan I am in currently listing my income at $8,434.70"

B. "Understated income of 2015 tax liability. Taxes due for 2015 same year I filed Bankruptcy."

C. "I also requested him to amend my plan to pay 2015 taxes as a secured debt which should be paid priority 100% for remaining months in plan and request the remaining unsecured debt which should be converted to 20% repayment plan versus 100% repayment"

D. "I requested he file a motion to remove the abstract of judgment and have the lien removed off my current property as allied trust service is listed as an unsecured debt and the property has been sold. Reading page 2 states Secured claims: with respect to each allowed claim provided for by the plan, The plan provides that the holder of such claim retain the lien securing the claim) Well this is an unsecured claim so they should not be allowed to hold a lien as secured debt."

E. "I also asked him if he could please let the judge rule on my case and not simply tell me no I cannot change or no he spoke to the trustee. He spoke to the trustee and said the trustee change my payment from $370.00 per month to $500.00 per month but I never received anything from the bankruptcy court so I begin to question was I legally obligated to pay the higher amount without the courts telling me so. I simply wanted to know was he acting in my best interest"

APPLICABLE LAW

District Court Rule 182(d) governs the withdrawal of counsel. LOCAL BANKR. R. 1001-1(C). The District Court Rule prohibits the withdrawal of counsel leaving a party *in propria persona* unless by motion noticed upon the client and all other parties who have appeared in the case. E.D. CAL. LOCAL R. 182(d). The attorney must provide an affidavit stating the current or last known address or addresses of the client and efforts made to notify the client of the motion to withdraw. *Id.* Leave to withdraw may be granted subject to such appropriate conditions as the Court deems fit. *Id.*

Withdrawal is only proper if the client's interest will not be unduly prejudiced or delayed. The court may consider the following factors to determine if withdrawal is appropriate: (1) the reasons why the withdrawal is sought; (2) the prejudice withdrawal may cause to other litigants; (3) the harm withdrawal might cause to the administration of justice; and (4) the degree to which withdrawal will delay the resolution of the case. *Williams v. Troehler*, No. 1:08cv01523 OWW GSA, 2010 U.S. Dist. LEXIS 69757 (E.D. Cal. June 23, 2010). FN.1.

FN.1. While the decision in *Williams v. Troehler* is a District Court case and concerns Eastern District Court Local Rule 182(d), the language in 182(d) is identical to Local Bankruptcy Rule 2017-1.

It is unethical for an attorney to abandon a client or withdraw at a critical point and thereby prejudice the client's case. *Ramirez v. Sturdevant*, 26 Cal. Rptr. 2d 554 (Cal. Ct. App. 1994). An attorney is prohibited from withdrawing until appropriate steps have been taken to avoid reasonably foreseeable prejudice to the rights of the client. *Id.* at 559.

The District Court Rules incorporate the relevant provisions of the Rules of Professional Conduct of the State Bar of California ("Rules of Professional Conduct"). E.D. CAL. LOCAL R. 180(e).

Termination of the attorney-client relationship under the Rules of Professional Conduct is governed by Rule 3-700. Counsel may not seek to withdraw from employment until Counsel takes steps reasonably foreseeable to avoid prejudice to the rights of the client. CAL. R. PROF'L CONDUCT 3- 700(A)(2). The Rules of Professional Conduct establish two categories for withdrawal of Counsel: either Mandatory Withdrawal or Permissive Withdrawal.

Mandatory Withdrawal is limited to situations where Counsel (1) knows or should know that the client's behavior is taken without probable cause and for the purpose of harassing or maliciously injuring any person and (2) knows or should know that continued employment will result in violation of the Rules of Professional Conduct or the California State Bar Act. CAL. R. PROF'L CONDUCT 3-700(B).

Permissive withdrawal is limited to certain situations, including the one relevant for this Motion:

(1) The client

(d) by other conduct renders it unreasonably difficult for the member to carry out the employment effectively.

CAL. R. PROF'L. CONDUCT 3-700(C)(1)(d).

DISCUSSION

Movant does not discuss any prejudice his withdrawal as a counsel will or will not cause or harm it might or might not have on administration of justice.

At the hearing, the parties reported that **xxxxx**.

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 Withdraw as Attorney filed by Debtor's Counsel 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 Withdraw as Attorney is xxxxx.

34. **15-25158-E-13** **SHERRY KIDDY** **MOTION FOR COMPENSATION FOR**
PSB-2 **Pauldeep Bains** **PAULDEEP BAINS, DEBTOR'S ATTORNEY**
5-7-17 [30]

Final Ruling: No appearance at the June 6, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on May 7, 2017. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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.

Pauldeep Bains, the Attorney ("Applicant") for Sherry Kiddy, 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 October 12, 2016, through May 7, 2017. Applicant requests fees in the amount of $1,260.00.

TRUSTEE'S NON-OPPOSITION

David Cusick, the Chapter 13 Trustee, entered a statement of non-opposition on May 9, 2017.

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.

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

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 the services provided by Applicant related to the estate enforcing rights and obtaining benefits including selling real property. The court finds the services were beneficial to the Client and bankruptcy 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 Client's prior counsel 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. 13.

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.

Case Administration: Applicant spent 5.1 hours in this category, uncharged. Applicant communicated with Client and the Trustee, filed documents, and drafted amendments.

Motion to Sell: Applicant spent 5.1 hours in this category, of which 4.2 were billed. Applicant assisted Debtor in proposing a motion to sell real property, including discussions with a realtor and with the Trustee.

Motion for Approval of Professional Fees: Applicant spent 2.0 hours in this category, uncharged. Applicant prepared the instant 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 Cianchetta,	4.2 hours	$300.00	$1,260.00
Total Fees for Period of Application			$1,260.00

FEES ALLOWED

The unique facts surrounding the case, including selling property after confirmation of a 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 $1,260.00 is approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the 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 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees $1,260.00

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 Cianchetta ("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 Cianchetta is allowed the following fees and expenses as a professional of the Estate:
>
> Peter Cianchetta, Professional Employed by Chapter 13 Debtor
>
> Fees in the amount of $1,260.00
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 13 Debtor.
>
> **IT IS FURTHER ORDERED** that the 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.

35. **17-22975-E-13 SS-2** | **TERRY ARNOLD** **Scott Shumaker** | **CONTINUED MOTION TO IMPOSE AUTOMATIC STAY** **5-1-17 [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)(3) 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, and Office of the United States Trustee on May 1, 2017. By the court's calculation, 8 days' notice was provided.

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

The Motion to Impose the Automatic Stay is granted.

Terry Arnold ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) imposed in this case. This is the Debtor's fourth bankruptcy petition pending in the past year with the prior three cases having been dismissed. The Debtor's prior bankruptcy cases (Nos. 16-20587, 16-25349, and 16-27411) were dismissed on August 4, 2016; October 19, 2016; and March 30, 2017, respectively. *See* Order, Bankr. E.D. Cal. No. 16-20587, Dckt. 60, August 4, 2016; Order, Bankr. E.D. Cal. No. 16-25349, Dckt. 32, October 19, 2016; Order, Bankr. E.D. Cal. No. 16-27411, Dckt. 30, March 30, 2017. Therefore, pursuant to 11 U.S.C. § 362(c)(4)(A)(i), the provisions of the automatic stay did not go into effect upon Debtor filing the instant case.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on May 2, 2017. Dckt. 18. The Trustee does not oppose the Motion and has received $9,434.00 from Debtor.

MAY 9, 2017 HEARING AND INTERIM ORDER

At the hearing, the court granted the motion on an interim basis, set a final hearing for 3:00 p.m. on June 6, 2017, and imposed the stay through and including noon on June 16, 2017. Dckt. 28 & 30. The court ordered that any opposition be filed by May 23, 2017, and any responses by filed by May 31, 2017.

DISCUSSION

No further pleadings have been filed since the May 9, 2017 hearing.

Here, Debtor states that the instant case was filed in good faith and explains that the immediately previous case was dismissed because he could not make all plan payments after becoming sick, after the Franchise Tax Board levied funds, and after he paid approximately $19,000.00 in gambling debt. Dckt. 12. Debtor states that his gambling debts have been paid fully now and that he paid $4,717.00 to the Trustee on April 3, 2017. He also states that $4,717.00 has been deducted from his last paycheck and remitted to the Trustee.

Debtor pleads that time is of the essence because a Trustee's sale is scheduled for May 24, 2017.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions imposed if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(4)(B). The subsequently filed case is presumed to be filed in bad faith if two or more of Debtor's cases were both pending within the year preceding filing of the instant case. *Id.* § 362(c)(4)(D)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 362(c)(4)(D).

Debtor's prior cases were dismissed after Debtor moved to dismiss the case (No. 16-20587), after Debtor failed to make installment payments (No. 16-25349) and after Debtor failed to commence plan payments (No. 16-27411).

The Motion states that Debtor's income is adequate to fund a plan, and he should not have any problem funding a plan now that his gambling debts have been satisfied. Additionally, the Motion alleges that $9,500.00 has been paid already.

In the prior case, Debtor attempted to continue in prosecution of the case, explaining the reasons for the default, the levy on his bank account for a debt of his ex-wife (for which Debtor does not have liability), and the other factors causing the defaults. The court in the prior case concluded that rather than vacating the order dismissing that case, and there still being an arrearage to address, the filing of a new case and Debtor seeking imposition of the automatic stay appeared to be a more financially feasible alternative. 15-27411; Civil Minutes, Dckt. 40. This is a high income Debtor who should be able to prosecute this case and save a very substantial equity in his home. Well aware of his shortcomings, the court stated:

> "In a new case, Debtor can start fresh with plan payments and have no arrearage to cure while having to also make the current monthly payment. Debtor and counsel can seek an order imposing the automatic stay, and with that explain to the court the safeguards put in place to ensure that the monthly plan payment would be made

> (including the now even larger arrearage on the secured claim) to protect Debtor from any effects of his illness. Debtor and his attorney can also explain how Debtor is recovering the $8,100.00 improperly levied on by the FTB (which levy could well be in violation of the automatic stay)."

Id. at 7.

Debtor and his attorney have provide that information. Debtor's Declaration explains that the wage order is in place to have the monthly plan payment made directly to the Chapter 13 Trustee. Dckt. 12. Debtor testifies what he is doing to address his health issues. Debtor also confirms that the Chapter 13 Trustee has also retained several payments made in the prior case, rather than those monies being disbursed back to Debtor.

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

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Impose the Automatic Stay filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and the automatic stay is imposed pursuant to 11 U.S.C. § 362(c)(4)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

36. 15-20080-E-13 JESUS/JESSICA CARDENAS MOTION TO MODIFY PLAN
ALF-4 Ashley Amerio 4-21-17 [112]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 21, 2017. By the court's calculation, 46 days' notice was provided. 35 days' notice is required.

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.

Jesus Cardenas, Sr., and Jessica Cardenas ("Debtor") seek confirmation of the Modified Plan because their childcare expenses increased after Debtor's father stopped providing support and after Debtor's two-year-old child began eating more. Dckt. 112. The Modified Plan proposes payments of $4,767.00 per month for months 29–60 with a 2.5% dividend to unsecured claims. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on May 23, 2017. Dckt. 120. The Trustee asserts that he cannot determine if Debtor is current under the Plan.

The Plan calls for Debtor to have paid $127,851.35 through the twenty-eighth month of the Plan, which is May 2017, with $4,767.00 due on the twenty-fifth day of the month. Debtor paid $4,767.00 on May 8, 2017, and has paid $123,084.35 to date. Debtor appears to be delinquent in the amount of $4,767.00—one month of payment under the proposed plan. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

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

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

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

37. 17-21081-E-13 RSG-1 | **DOREEN TORRES** **Robert Gimblin** | **MOTION TO VALUE COLLATERAL OF FORD MOTOR CREDIT COMPANY, LLC 4-27-17 [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 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, Chapter13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on April 25, 2017. By the court's calculation, 42 days' notice was provided. 14 days' notice is required.

The Motion to Value Secured Claim was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and 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 Secured Claim of Ford Motor Credit Company, LLC ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $7,852.00.

The Motion filed by Doreen Torres ("Debtor") to value the secured claim of Ford Motor Credit Company, LLC ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2014 Ford Focus ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $7,852.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on May 23, 2017. Dckt. 36. The Trustee states that Creditor is included in the Class 2 of the Plan and has filed Claim No. 4, claiming $22,059.24 as secured.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on August 23, 2014, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $22,059.24, according to Creditor's proof of claim. Claim No. 4. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of $7,852.00, 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 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 Value Secured Claim filed by Doreen Torres ("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 Ford Motor Credit Company, LLC ("Creditor") secured by an asset described as 2014 Ford Focus ("Vehicle") is determined to be a secured claim in the amount of $7,852.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $7,852.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

38. 16-25884-E-13 GLORIA RANNALS MOTION TO MODIFY PLAN
SDH-1 Scott Hughes 4-17-17 [35]

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 17, 2017. By the court's calculation, 50 days' notice was provided. 35 days' notice is required.

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.

Gloria Rannals ("Debtor") seeks confirmation of the Modified Plan because it accounts for a hazard insurance claim by CIT Bank, N.A. ("Creditor"). Dckt. 35. The Modified Plan in Class 1 adds Creditor's force placed insurance claim for $703.79, adds Creditor's supplemental mortgage claim for $650.00, and increases Creditor's property tax claim from $10,000.00 to $10,477.27. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on May 23, 2017. Dckt. 46. The Trustee asserts that Debtor is $290.00 delinquent in plan payments under the proposed plan. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Additionally, the Trustee questions whether including Creditor's Class 1 claim for $703.79 is appropriate because a Notice of Postpetition Mortgage Fees, Expenses, and Charges has not been filed.

DEBTOR'S RESPONSE

Debtor filed a Response on May 30, 2017. Dckt. 49. Regarding the delinquency, Debtor's Attorney reports that Debtor suffered a stroke on April 27, was hospitalized, has since returned home, and has been unable to speak. Debtor's Attorney states that Debtor's granddaughter, Christy Potts, was supposed to deliver the delinquent plan payments to the Trustee on May 24, 2017, but Debtor's Attorney does not have any proof that the payments were made.

As for the $703.79, Debtor's Attorney reports that it was added to the Plan to accommodate Creditor and defend against a possible motion for relief from the automatic stay. Debtor's Attorney believes that Debtor could file a claim for Creditor with sixty days of the Notice of Filed Claims being issued on April 13, 2017. Even if a claim is not filed, Debtor's Attorney argues that Creditor's claim would be secured and would survive any potential discharge, thus requiring Debtor to pay the amount at some time.

DISCUSSION

Debtor has proposed a plan by which there is a delinquency in plan payments. No evidence has been presented that the delinquency has been cured. The Modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is not confirmed.

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

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

39. 17-21385-E-13 JOANN NORRIS
APN-1 Eamonn Foster

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A.
4-20-17 [25]

Final Ruling: No appearance at the June 6, 2017 hearing is required.

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, and Office of the United States Trustee on April 20, 2017. By the court's calculation, 19 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 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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

The Objection to Confirmation of Plan is overruled as moot.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Objection, JoAnn Norris ("Debtor") filed a First Amended Plan and corresponding Motion to Confirm on May 23 & 24, 2017. Dckt. 42 & 47. Filing a new plan is a *de facto* withdrawal of the pending plan. The Objection to Confirmation is overruled as moot, and the plan is not confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by a Creditor with a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled as moot, Debtor having filed a subsequent amended plan, withdrawing from consideration the one objected to by the Trustee.

40. **17-21385-E-13** **JOANN NORRIS**
DPC-1 **Eamonn Foster**

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
4-19-17 [20]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the June 6, 2017 hearing is required.

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

41. **17-21587-E-13** **HEATHER LARSON** **MOTION TO CONFIRM PLAN**
HLG-1 **Kristy Hernandez** **4-24-17 [13]**

Final Ruling: No appearance at the June 6, 2017 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 25, 2017. By the court's calculation, 42 days' notice was provided. 42 days' notice is required.

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 Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Debtor has provided evidence in support of confirmation. The Chapter 13 Trustee filed a Non-Opposition on May 3, 2017. Dckt. 19. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan 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 Debtor's Amended Chapter 13 Plan filed on April 24, 2017, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed

order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

42.	**17-21493-E-13** **DPC-1**	**TEARA MENDEZ-OTLANG AND NEAL OTLANG** **Peter Macaluso**	**CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **4-14-17 [18]**

Final Ruling: No appearance at the June 6, 2017 hearing is required.

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 and Debtor's Attorney on April 14, 2017. By the court's calculation, 25 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 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

The hearing on the Objection to Confirmation of Plan is continued to 3:00 p.m. on July 11, 2017.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that it relies upon a Motion to Value Secured Claim set for hearing on June 6, 2017.

DEBTOR'S REPLY

Teara Mendez-Otlang and Neal Otlang ("Debtor") filed a Reply on April 24, 2017. Dckt. 22. Debtor requests that the hearing be continued to June 6, 2017, to coincide with the Motion to Value Secured Claim.

MAY 9, 2017 HEARING

At the hearing, the court continued this matter to 3:00 p.m. on June 6, 2017. Dckt. 24.

CONTINUANCE OF HEARING

No additional pleadings have been filed since the May 9, 2017 hearing.

The Objection relates directly to a Motion to Value Secured Claim that has been continued to 3:00 p.m. on July 11, 2017. Continuing this matter to the same hearing as that Motion is appropriate. Therefore, the hearing on the Objection is continued to 3:00 p.m. on July 11, 2017.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Chapter 13 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 hearing on the Objection to Confirmation of the Plan is continued to 3:00 p.m. on July 11, 2017.

43.	**17-21493-E-13 PGM-1**	**TEARA MENDEZ-OTLANG AND NEAL OTLANG Peter Macaluso**	**MOTION TO VALUE COLLATERAL OF TRAVIS CREDIT UNION 4-12-17 [13]**

Final Ruling: No appearance at the June 6, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on April 12, 2017. By the court's calculation, 55 days' notice was provided. 28 days' notice is required.

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

The hearing on the Motion to Value Secured Claim of Travis Credit Union ("Creditor") is continued to 3:00 p.m. on July 11, 2017.

The Motion filed by Teara Mendez-Otlang and Neil Otlang ("Debtor") to value the secured claim of Travis Credit Union ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2008 Toyota Prius ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $5,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

CREDITOR'S OPPOSITION

Creditor filed an Opposition on May 16, 2017. Dckt. 27. Creditor asserts that the replacement value for the Vehicle is $9,495.00 as of the petition date. Creditor has provided a copy of the Kelley Blue Book report for the Vehicle indicating a retail value of $9,495.00. Exhibit A, Dckt. 28.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on May 23, 2017. Dckt. 31. The Trustee notes that Creditor has filed a claim for $15,464.00, with $9,495.00 listed as secured and $5,969.00 listed as unsecured. *See* Claim No. 2.

PARTIES' STIPULATION

Debtor and Creditor submitted a jointly-signed stipulation on May 25, 2017, requesting that the hearing on this Motion be continued to 3:00 p.m. on July 11, 2017. Dckt. 34.

ORDER GRANTING STIPULATION

On May 27, 2017, the court entered an order granting the parties stipulation to continue the hearing to 3:00 p.m. on July 11, 2017. Dckt. 36.

DEBTOR'S REPLY

Debtor filed a Reply on May 29, 2017. Dckt. 37. Debtor notes that the parties filed a Stipulation to continue the hearing and requests that the court grant that Stipulation.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on July 8, 2013, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $15,464.00. Whether the court accepts Debtor's or Creditor's assertion of the Vehicle's value ($5,000.00 and $9,495.00, respectively), Creditor's claim secured by a lien on the asset's title is under-collateralized.

The court granted the parties' stipulation to continue the hearing on May 27, 2017. The hearing has been continued to 3:00 p.m. on July 11, 2017.

44. **17-23093-E-13 SDH-2** | **ROBERT CLIFF, JR.** **Scott Hughes** | **MOTION TO EXTEND AUTOMATIC STAY** **5-11-17 [13]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 11, 2017. By the court's calculation, 26 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 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.

Robert Cliff, Jr. ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) 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. 15-29002) was dismissed on March 30, 2017, after Debtor failed to make plan payments. *See* Order, Bankr. E.D. Cal. No. 15-29002, Dckt. 60, March 30, 2017. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because he fell behind on payments after his spouse had medical issues. Now, Debtor intends to sell his home to pay the mortgage fully.

APPLICABLE LAW

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). 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.

INTERIM ORDER

On May 12, 2017, the court issued an interim order granting an *ex parte* request to extend the stay and continued the stay through June 13, 2017. Dckt. 19.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on May 23, 2017, indicating that he does not oppose the Motion. Dckt. 25.

DISCUSSION

Debtor has demonstrated that the prior case was dismissed when unexpected medical issues caused Debtor to fall behind on payments. Now, Debtor intends to alleviate the pressure of making plan payments by marketing and selling his house and paying a mortgage on it in full. Debtor has sufficiently

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

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Extend the Automatic Stay filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

45. **14-31894-E-13** **MOISES ARTEAGA** **MOTION TO APPROVE LOAN MODIFICATION**
MET-2 **Mary Ellen Terranella** **5-6-17 [33]**

Final Ruling: No appearance at the June 6, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, and Office of the United States Trustee on May 6, 2017. By the court's calculation, 31 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 Moises Arteaga ("Debtor") seeks court approval for Debtor to incur post-petition credit. Nationstar Mortgage, LLC ("Creditor"), whose claim the Plan provides for in Class 4, has agreed to a loan modification that will reduce Debtor's mortgage payment from the current $1,168.00 per month to $999.11 per month. The modification provides for a new principal balance of $270,944.87, with $62,498.19 deferred, and it provides for stepped increases in the interest rate from 2.00% to 3.00% to 4.00% to 4.125% over the next 40 years.

The Motion is supported by the Declaration of Moises Arteaga. Dckt. 35. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms.

TRUSTEE'S NON-OPPOSITION

David Cusick, the Chapter 13 Trustee, filed a Non-Opposition on May 23, 2017. Dckt. 38.

DISCUSSION

This post-petition financing is consistent with the Chapter 13 Plan in this case and with Debtor's ability to fund that Plan. There being no objection from the 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 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 Approve Loan Modification filed by Moises Arteaga 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 Moises Arteaga ("Debtor") to amend the terms of the loan with Nationstar Mortgage, LLC ("Creditor"), which is secured by the real property commonly known as 200 Poplar Street, Vacaville, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion (Dckt. 36).

46. 17-20494-E-13 SDB-2 THOMAS/COZETTE CRAVENS W. Scott de Bie MOTION TO MODIFY PLAN 4-25-17 [26]

Final Ruling: No appearance at the June 6, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 25, 2017. By the court's calculation, 42 days' notice was provided. 35 days' notice is required.

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Debtor has filed evidence in support of confirmation. The Chapter 13 Trustee filed a Non-Opposition on May 23, 2017. Dckt. 33. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on April 25, 2017, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed

order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

47. 17-21494-E-13 DPC-1 | **ARTHUR POMPA** **Peter Macaluso** | **AMENDED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **5-24-17 [25]**

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 26, 2017. By the court's calculation, 41 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 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.

David Cusick, the Chapter 13 Trustee, originally opposed confirmation on the ground that Arthur Pompa ("Debtor") had not appeared at the Meeting of Creditors. Dckt. 21. That ground was cured by Debtor's appearance, but the Trustee amended the Objection to assert that Debtor is delinquent by $4,000.00.

DEBTOR'S REPLY

Debtor filed a Reply on May 29, 2017, stating that Debtor will be current on or before the hearing on June 6, 2017. Dckt. 28.

DISCUSSION

The Trustee's objection is well-taken. The Trustee asserts that Debtor is $4,000.00 delinquent in plan payments, which represents one month of the $4,000.00 plan payment. According to the Trustee, the Plan in § 1.01 calls for payments to be received by the 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).

Even though Debtor promises to cure the delinquency by the hearing, a promise of payment is not evidence of such. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained, and the Plan is not confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Chapter 13 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.

48. **17-21494-E-13** **ARTHUR POMPA** **OBJECTION TO CONFIRMATION OF**
JHW-1 **Peter Macaluso** **PLAN BY AMERICREDIT FINANCIAL SERVICES, INC.**
4-3-17 [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, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on April 3, 2017. By the court's calculation, 64 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 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.

Americredit Financial Services, Inc. dba GM Financial, Creditor with a secured claim, opposes confirmation of the Plan on the basis that Debtor's plan fails to provide the proper formula discount rate, pursuant to 11 U.S.C. § 1325(a)(5)(B)(ii) and *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). The proposed Chapter 13 Plan provides for a 3% interest rate to be paid on this Class 2 claim.

Creditor's objection is well-taken. Creditor objects to the confirmation of the Plan on the basis that the Plan does not provide for the present value of Creditor's secured claim. Creditor's claim is secured by a 2016 Nissan Pathfinder. Creditor argues that this interest rate is outside the limits authorized by the Supreme Court in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). In *Till*, a plurality of the Court supported the "formula approach" for fixing post-petition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the formula approach. *See In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); *see also Bank of Montreal v. Official Comm. of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had a

preference for the formula approach. *See Cachu*, 321 B.R. at 719 (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)).

The court agrees with the court in *Cachu* that the correct valuation of the interest rate is the prime rate in effect at the commencement of this case plus a risk adjustment. Because the creditor has only identified risk factors common to every bankruptcy case, the court fixes the interest rate as the prime rate in effect at the commencement of the case, 3.75%, plus a 1.25% risk adjustment, for a 5.00% interest rate. The objection to confirmation of the Plan on this basis is sustained. *See* 11 U.S.C. § 1325(a)(5)(B)(ii).

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by a creditor with 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.