UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

June 22, 2021 at 2:00 p.m.

1.	**19-23208-E-13** **MJD-4**	**PAUL/PAMELA ROBERTS** **Matthew DeCaminada**	**MOTION TO MODIFY PLAN** **5-18-21 [82]**

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, parties requesting special notice, creditors, and Office of the United States Trustee on May 18, 2021. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy 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 without prejudice.

The debtors, Paul Wayne Roberts and Pamela Lee Roberts ("Debtor") seek confirmation of the Modified Plan to become current under the plan after Debtor fell behind on payments due to the death of Debtor's son. Declaration, Dckt. 85. The Modified Plan provides for monthly payments of $2,000 commencing June 25, 2021 for the remainder of the plan, and a 100 percent dividend to unsecured claims totaling $25,445.44. Modified Plan, Dckt. 84. 11 U.S.C. § 1329 permits a debtor to

modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on June 2, 2021. Dckt. 90. Trustee opposes confirmation of the Plan on the basis that:

A. The Debtor is requesting the 84 month term allowed under the CARES Act but Debtor has not pleaded and provided evidence of material hardship directly or indirectly related to COVID-19.

B. Debtor may not be able to make plan payments.

DISCUSSION

CARES Act

Debtor seeks to modify the plan and extend it to 84 months on the basis that they have been affected by the COVID-19 pandemic. According to Trustee, Debtor has not provided evidence that they have been affected directly or indirectly by the pandemic.

Under the CARES Act amendments to the Bankruptcy Code, as they pertain to Chapter 13 debtors, Congress added subsection (d)(1) to 11 U.S.C. § 1329 to permit a debtor to modify a confirmed plan due to events flowing from the current COVID-19 pandemic. The CARES Act provides protection to Chapter 13 debtors to extend a plan if the debtor shows that he has been directly or indirectly affected by the current health crisis. Though the Act does not provide an exact time line for when a debtor may take advantage of this relief, a debtor does not avoid his or her duty to diligently prosecute a bankruptcy case.

Here, Debtor indicates that they fell behind on plan payments due to the death of their son. Declaration, Dckt. 85. Unfortunately, Debtor fails to state how their situation was directly or indirectly affected by COVID-19. Though Debtor has experienced a tragedy, court is uncertain as to whether the Debtor's situation is at all related to COVID-19.

Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The Trustee notes that Debtors are delinquent $16,895.00. While Debtors allege changes to their situation, Debtor did not file supplemental Schedules I or J in support of the their motion. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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

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

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

hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtors, Paul Wayne Roberts and Pamela Lee Roberts ("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 without prejudice, and the proposed Chapter 13 Plan is not confirmed.

2. 20-21211-E-13 CDL-22 — FELICIA HICKS — Colby LaVelle — MOTION TO MODIFY PLAN — 5-8-21 [63]

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 May 18, 2021. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy 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 xxxxx.

The debtor, Felicia Lynn Hicks ("Debtor") seeks confirmation of the Modified Plan to become current in plan payments after missing November 2020 through February 2021 due to her mother falling ill, paying her medical bills, and missing work to take care her. Declaration, Dckt. 65. The Modified Plan provides:

(1) $2,800 to be paid through February 2021,

(2) followed by 35 monthly payments of $227.87 and

(3) culminating with one monthly payment of $93.43 on February 2024, and

(4) a two (2) percent dividend to unsecured claims totaling $31,085.89.

Modified Plan, Dckt. 62. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on June 2, 2021. Dckt. 71. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor failed to properly serve the Internal Revenue Service.

B. Debtor has incurred a new debt without the Court's permission

DISCUSSION

Insufficient Notice

Federal Rule of Bankruptcy Procedure 2002(b)(2) requires twenty-eight days' notice "for filing objections and the hearing to consider confirmation of a . . . chapter 13 plan." FED. R. BANKR. P. 2002(b)(2). Debtor has failed to serve all parties in interest. As per the Debtor's certificate of service, the Internal Revenue Service was not properly served. That failure to provide notice violates Federal Rule of Bankruptcy Procedure 2002(b)(2).

Amended Schedule J - Car Payment

Trustee notes that Debtor's Amended Schedule J reflects, on line 17a., a car payment of $385.00. This payment is not reflected in the plan and is not listed on the Schedule J filed with the petition.

A review of the Schedule J filed with the petition shows the original line 17a. reflected a car payment of $480. This was listed as a Class 4 claim on Debtor's confirmed plan. Dckt. 11. This was the lease payment for a vehicle which creditor, Honda Financial, sought and was granted relief from the automatic stay. Dckt. 39. An amended Proof of Claim from Honda Financial shows that after the vehicle was sold at auction, Debtor's remaining balance on the lease was $2,985.77. Amended Proof of Claim 1-2.

At this point, the court is uncertain whether the Debtor purchased a new vehicle without leave from this court, or if the $385.00 payment on the Amended Schedule J is payment for the remaining balance on the Honda Financial lease.

At the hearing, Debtor clarified xxxxxx

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

~~and is not confirmed.~~

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Felicia Lynn Hicks ("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 **xxxxx**.

3. **18-25432-E-13 PSB-2** **VANESSA TRISTANT**
Paul Bains

MOTION FOR COMPENSATION BY THE LAW OFFICE OF BAINS LEGAL, PC FOR PAULDEEP BAINS, DEBTORS ATTORNEY(S)
5-20-21 [54]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 20, 2021. By the court's calculation, 33 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00).

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

The Motion for Allowance of Professional Fees is granted.

Pauldeep Bains, the Attorney ("Applicant") for Vanessa Nadine Tristant, the Chapter 13 Debtor ("Client"), makes a Request for the Additional Allowance of Fees and Expenses in this case.

Fees are requested for the period January 29, 2021, through March 30, 2021. Applicant requests fees in the amount of $1,918.50.

The Trustee does not oppose the fees requested. Dckt. 59.

APPLICABLE LAW

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

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

Further, the court shall not allow compensation for,

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

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

Reasonable Fees

A bankruptcy court determines whether requested fees are reasonable by examining the

circumstances of the attorney's services, the manner in which services were performed, and the results of the services, by asking:

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Reasonable Billing Judgment

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

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

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

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

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

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

"No-Look" Fees

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

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

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed $4,000.00 in attorneys' fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 23. 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 6.2 hours in this category. Applicant communicated with client and the Trustee's office, drafted the motion and the plan; filed and served it; drafted a reply; and attended the hearing.

Motion to Dismiss: Applicant spent 0.8 hours in this category. Applicant communicated with client; drafted reply; and attended the hearing.

Motion for Compensation: Applicant spent 2.0 hours in this category. Applicant prepared motion; and filed and served it.

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
Pauldeep Bains	5.1	$300.00	$1,530.00
Paralegal	2.1	$185.00	$388.50
Total Fees for Period of Application			$1,918.50

Costs and Expenses

Applicant does not seek costs and expenses through this application.

FEES AND COSTS & EXPENSES ALLOWED

Fees

The unique facts surrounding the case, including filing Motion to Modify Plan, responding to Trustee's Motion to Dismiss, and preparing the instant motion for compensation, 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 $1,918.50 is approved pursuant to 11 U.S.C. § 330 and authorized to be paid by David Cusick ("the Chapter 13 Trustee") from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

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

Fees	$1,918.50
Costs and Expenses	$0.00

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Pauldeep Bains ("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 Pauldeep Bains is allowed the following fees and expenses as a professional of the Estate:

Pauldeep Bains, Professional Employed by Vanessa Nadine Tristant ("Debtor")

Fees in the amount of $1,918.50
Expenses in the amount of $0.00,

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

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

4. **20-20868-E-13 MET-3** **4 thru 5**

DESHAUNNA PAYNE
Mary Ellen Terranella

MOTION TO VALUE COLLATERAL OF AARON'S INC.
6-1-21 [59]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on June 1, 2021. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Aaron's, Inc. ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $1,800.00.

The Motion filed by Deshaunna Tranise Payne ("Debtor") to value the secured claim of Aaron's, Inc. ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 61. Debtor is the owner of an 86" Class LG Smart 4K UHD TV ("Property"). Debtor seeks to value the Property at a replacement value of $1,800.00 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).

The Trustee does not oppose the relief requested. Dckt. 67.

The lien on the Property secures a purchase-money loan incurred in January, 2019, which is more than one year prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $7,502.64. Proof of Claim 7-1. 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

$1,800.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Collateral and Secured Claim filed by Deshaunna Tranise Payne ("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 Aaron's, Inc. ("Creditor") secured by an asset described as 86" Class LG Smart 4K UHD TV ("Property") is determined to be a secured claim in the amount of $1,800.00, 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 $1,800.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

5. **20-20868-E-13 MET-2** **DESHAUNNA PAYNE** **Mary Ellen Terranella** **CONTINUED MOTION TO CONFIRM PLAN** **4-23-21 [49]**

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 23, 2021. By the court's calculation, 46 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is xxxxx.

The debtor, Deshaunna Tranise Payne ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for plan payments of $1,731.00 per month for 14 months, followed by $2,150.00 per month for 46 months, and a zero percent dividend to unsecured claim totaling $33,470.00. Amended Plan, Dckt. 54. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on May 25, 2021. Dckt. 56. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor is delinquent in plan payments.

B. Plan relies on a Motion to Value Collateral not yet filed.

C. Debtor may not be able to make the plan payments.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is $1,717.00 delinquent in plan payments, which represents a portion of the monthly payment of the $2,150.00 plan payment. According to the Chapter 13 Trustee, the Plan in § 2.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor filed a Reply on June 1, 2021. Dckt. 63. Debtor asserts having made a payment in the amount of $2,300 on May 28, 2021. Moreover, Debtor explains that the calculation of payments made into the plan as of April 2021 was slightly inaccurate and states that the correct plan payments are $1,608.00 per month for 14 months and $2,150 per month for 46 months. Debtor has attached a proposed order correcting the plan payments. Dckt. 65.

Debtor's Reliance on Motion to Value Secured Claim

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Aaron's Inc. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

A review of the docket shows that Debtor has filed, on June 1, 2021, the Motion to Value the Secured Claim. Dckt. 59. The Motion has been set for hearing at 2:00 p.m. on June 22, 2021.

Failure to Afford Plan Payment / Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). According to Trustee, Amended Schedule I, line 8h, identifies $2,290.00 as "Contributions from daughter," yet, Debtor has failed to file a declaration from the daughter declaring that she can afford and is willing to make that contribution for the duration of the Plan. For the final 46 months of the Plan, this equals Debtor's daughter contributing $105,340 for this Plan. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Debtor filed the Declaration of Mya Thomas on June 1, 2021. Dckt. 64. Debtor's daughter testifies to the following:

1. Daughter and her son reside with Debtor.

2. Daughter has a full-time job and contributes $1,000 per month towards household expenses.

3. Daughter has the financial ability to continue provide this financial support to Debtor for as long as Debtor is in her Chapter 13 plan.

Debtor notes that the Schedule states daughter's contribution is $1,000 and not the $2,290 indicated by Trustee. The proposed Amended Plan requires monthly plan payments of $2,150.00 for the

final 46 months of the Plan. On Supplemental Schedule J, Debtor shows having monthly income (the projected disposable income) after having monthly expenses of only ($1,782) for a family unit of two adults and one child. Dckt. 53. Some the expenses shown on Supplemental Schedule J appear questionable, including: ($315.00) for food and housekeeping supplies, ($20.00) for medical and dental expenses.

On Supplemental Schedule I, Debtor computes having $3,932 in monthly net income, which includes a $1,000 a month "Contribution From Daughter." Dckt. 52. It appears that the Opposition is a clerical error, with the Declaration being consistent with Supplemental Schedule I.

This part of the Objection is overruled.

June 22, 2021 Hearing

On June 22, 2021, Debtor's motion to Value the Collateral the secured claim of Aaron's Inc. was granted pursuant to Debtor's valuation of the collateral.

At the hearing xxxxxxxx

6.	**21-21036-E-13 PGM-2**	**JEFFREY/YELENA MAYHEW Peter Macaluso**	**MOTION TO AVOID LIEN OF ONEMAIN FINANCIAL SERVICES, INC. 5-12-21 [26]**

APPEARANCE OF PETER MACALUSO, ESQ., ATTORNEY FOR DEBTOR, AND ANY AND ALL PARALEGAL STAFF WHO PARTICIPATED IN THE DRAFTING OF THE MOTION ARE REQUIRED FOR THE HEARING ON THIS MOTION

TELEPHONIC APPEARANCES PERMITTED

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on May 12, 2021. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

The Motion to Avoid Creditor Lien 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 Avoid Judicial Lien is denied without prejudice.

The Motion filed by Jeffrey Scott Mayhew and Yelena Mikhaylovna Mayhew ("Debtor") to value the secured claim of OneMain Financial Services, Inc. ("Creditor") is accompanied by Debtor's declaration.

Debtor is the owner of a Sony Digital Camera, Sony Digital Camcorder, Pioneer HDTV Home Theater System, Sony 32" Television, Sanyo DVD/VCR Combo, and Taylor Golf Clubs ("Property"). Debtor seeks to value the Property at a replacement value of $270.00 as of the petition

filing date. Declaration, Dckt. 29. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Debtor states in the Motion with particularity that the personal property has a value of $270.00, that the lien impairs "an [unidentified] exemption to which Debtor is entitled to under 11 U.S.C. § 522(f)," no proof of claim has been filed in this bankruptcy case by Creditor but one was filed in Debtor's prior case, and that Debtor seeks to have the lien avoided. Motion, ¶¶ 4, 5, 6, and prayer for relief; Dckt. 26.

In reviewing the Motion, there are a few holes. While stating the conclusion that the lien impairs an exemption to which Debtor is entitled, Debtor does not state which exemption has been claimed, the legal authority for the exemption, and the amount of the exemption. Additionally, while making the statement that Creditor has a lien, the Motion does not identify the basis for the lien, the perfection of the lien, nor the obligation it secures, other than stating it is a non purchase money security interest. *Id*., ¶ 5.

Additionally, the Motion starts with the statement that Debtor seeks to "value securing Debtor's indebtedness to OneMain Financial Services, Inc, as servicer for Springleaf funding Trust 2." *Id*., p. 1:18. "Merely" valuing a secured claim, which is done pursuant to 11 U.S.C. § 506(a) is not the avoiding of a lien.

Exhibit A filed by Debtor (Dckt. 30) is a copy of Proof of Claim 5-1 filed in Debtor's prior case, 16-28073, which identifies the "creditor" as Onemain Financial Services, Inc., as Services [sic] for Springleaf Funding Trust 2." For the way this is filed, it is not clear whether Onemain Financial Services, Inc. is the creditor, or "merely" the servicer for the unnamed "trustee" of Springleaf Funding Trust 2.

A review of Proof of Claim 5-1 discloses some "interesting" terms. This loan had "consumer friendly" terms of only 33.99% interest. Proof of Claim 5-1, Part 1.

Also attached to Proof of Claim 5-1 is a Name Change Certificate in which the California Secretary of State provides his certification that the corporation with the name Springleaf Financial Services, Inc. was changed to Onemain Financial Services, Inc. It is unclear who Springleaf Financial Services, Inc. is providing loan services to - itself as trustee, or someone else as trustee, as a trust is not a separate legal entity who has standing in state or federal court.

> In contrast to a corporation, which the law often deems a person, a trust is not a person but rather " ' "a fiduciary relationship with respect to property." [Citations.]' " (*Ziegler v. Nickel* (1998) 64 Cal.App.4th 545, 548, italics omitted.) "Legal title to property owned by a trust is held by the trustee … . 'A … trust … is simply a collection of assets and liabilities.' " (*Galdjie v. Darwish* (2003) 113 Cal.App.4th 1331, 1343–1344.) "[A]n ordinary express trust is not an entity separate from its trustees." (*Powers v. Ashton* (1975) 45 Cal.App.3d 783, 787.)
>
> A trust itself cannot sue or be sued. (*Presta v. Tepper* (2009) 179 Cal.App.4th 909, 914.) "As a general rule, the trustee is the real party in interest with standing to sue and defend on the trust's behalf. [Citations.]" (*Estate of Bowles* (2008) 169

Cal.App.4th 684, 691.)

Portico Management Group, LLC v. Harrison, 202 Cal. App. 4th 464, 473 (2011); Fed. R. Civ. P. 17, Fed. R. Bankr. P. 7017, 9014(c).

Also attached to Proof of Claim 5-1 (pp. 8-14) is the Loan Agreement and Disclosure Statement. Though not identified by Debtor's counsel, and left for the court to ferret out at taxpayer expense, the Loan Agreement includes the granting of a security interest, which states:

> SECURITY INTEREST. To secure all amounts due or which become due under this Agreement and my performance of all other terms of this Agreement, I hereby **grant Lender a security interest** under the Uniform Commercial Code or other applicable law in: (a) **the property identified in the "Security" disclosure of the TRUTH IN LENDING DISCLOSURES**, including a purchase money security interest if property is being purchased with the proceeds hereof; . . .

Loan agreement, p. 2 (emphasis added).

Attached to the Loan Agreement is a "Personal Property Appraisal Form" that identifies "the only acceptable items to be used as personal property security. **DO NOT USE ANY OTHER ITEMS**)." Loan Agreement, Attachment at last page (emphasis in original). These personal property security items are identified as:

PERSONAL PROPERTY APPRAISAL FORM

(These are the only acceptable items to be used as personal property security. DO NOT USE ANY OTHER ITEMS). Business Property or Equipment cannot be included as security.

SCHEDULE A

ITEM	SIZE/MODEL	VALUE
Camera	SONY DIGITAL CAMERA	200
Golf Equipment	TAYLOR CLUBS	700
Camcorder	SONY DIGITAL CAMCORDER	400
Home Theater System	PIONEER HDTV 50"	1000
Television (Secondary)	SONY 32"	300
DVD/VCR Combination	SANYO DVD	100

In the Motion, the law upon by Debtor seeks relief is expressly stated with particularity to be 11 U.S.C. § 522(f)(1), which provides:

> (f)
> (1) Notwithstanding any waiver of exemptions but subject to paragraph (3), the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is—
>
> (A) a judicial lien, other than a judicial lien that secures a debt of a kind that is specified in section 523(a)(5); or
>
> (B) a nonpossessory, nonpurchase-money security interest in any—

> (i) household furnishings, household goods, wearing apparel, appliances, books, animals, crops, musical instruments, or jewelry that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor;
>
> (ii) implements, professional books, or tools, of the trade of the debtor or the trade of a dependent of the debtor; or
>
> (iii) professionally prescribed health aids for the debtor or a dependent of the debtor.

Debtor does not specify which provisions of 11 U.S.C. § 522(f)(1) support the relief requested. 11 U.S.C. § 522(f)(1)(A) allows for the avoidance of a judicial lien being asserted against property in which Debtor claims an exemption. There being no judicial lien, that provision does not apply.

It appears that the provisions of 11 U.S.C. § 522(f)(1)(B)(i) may apply, to a non-purchase money security interest in specified personal property items, what appear to be household goods.

Finally, a review of Debtor's Declaration includes Debtor's professional, expert, legal opinion that "The judgment lien on my personal property impairs an exemption which I am entitled to under 11 U.S.C. § 522(f)." Declaration, ¶ 4; Dckt. 29. Nothing in the declaration demonstrates that Debtor has any legal training. However, Debtor states under penalty of perjury that Debtor personally knows what the provisions of 11 U.S.C. § 522(f) provide, that Debtor has claimed exemptions to what Debtor is legally entitled, and that Debtor has personally applied the facts to the law and provides Debtor's legal conclusion that the unidentified exemption is impaired.

Possibly, the court needs to convene a hearing for these two debtors to appear, explain the basis for their testimony under penalty of perjury, and then provide the legal analysis for their legal opinion.

Debtor not having stated with particularity the ground that an exemption has been claimed and the amount of the exemption, the court cannot determine whether an exemption is impaired, and to what extent.

Debtor may argue that it would "only" take a modest effort for the court to pull up Debtor's Schedules, leaf through the Schedules to find Schedules A/B and C, analyze Schedule C to identify the assets claimed as exempt that could be the subject of this Motion, then state for Debtor the exemption(s) for those assets, the value of the properties and the exemption amounts, and finally then advocate for Debtor the amount of exemption, the impairment, and the avoiding of the lien. Unfortunately, the taxpayer funding of Debtor's motion has already been exhausted.

Though the court could deny the motion with prejudice, concluding that Debtor has provided the court with the best motion, evidence, and testimony possible, and therefore Debtor can never prevail on this Motion, the court will give Debtor and his representatives the benefit of the doubt that a mistake has been made in preparing this Motion and supporting documents, and deny it 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 Collateral and Secured Claim filed by Jeffrey Scott Mayhew and Yelena Mikhaylovna Mayhew ("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 denied without prejudice.

7. **21-21341-E-13 DPC-1** **IVAN VAN DYKE** **Peter Macaluso** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **5-20-21 [13]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on May 20, 2021. 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 Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing ----------.

The Objection to Confirmation of Plan is sustained.

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

A. The plan does not account for a new secured claim by the Internal Revenue Service.

B. Debtor has not been clear as to whether he resides in the address listed in his petition or the address he testified he resides in.

C. Debtor failed to disclose he has been married for more than 30 years and there is community property that was not listed in the schedules.

DISCUSSION

Trustee's objections are well-taken.

Failure to Afford Plan Payment

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

Proof of Claim- Internal Revenue Service

According to Trustee, the Internal Revenue Service asserts a claim of $91,234.13 in this case. Debtor's Schedule D fails to list this secured claim. Creditor's claim indicates that it is secured by all Debtor's right, title and interest to property. 26 U.S.C. §6321.

Inaccurate Information

Debtor has failed to clarify whether his residence and mailing address is the 11354 Pleasant Valley, California address provided in the Amended Voluntary Petition or if the Debtor is residing in Prescott, Arizona as Debtor testified.

Community Property Assets Not Listed

Debtor has supplied insufficient information relating to community real property and assets to assist the Chapter 13 Trustee in determining the value of the community property and assets. Debtor fails to report the fact he was in married for more than thirty years leading to substantial community property and an inability to properly value community property or assets.

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

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained, and the Plan is not confirmed. [Fn.1.]

FN. 1. Though it may not seem significant to Debtor, the failure to disclose what may be thirty (30) years of community property raises serious issues concerning the good faith of Debtor in filing this case, the good faith of Debtor in proposing the Plan, the good faith of the Debtor in prosecuting this case, and whether Debtor has the ability to prosecute this case under Chapter 13 in good faith, or whether the appointment of a Chapter 7 trustee will be necessary.

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

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

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

8. **19-25843-E-13** **JERLINE WALLACE**
Peter Macaluso

CONTINUED TRUSTEE'S FINAL REPORT AND ACCOUNT
2-16-21 [167]

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 7 Trustee, and Office of the United States Trustee on January 29, 2021. By the court's calculation, 69 days' notice was provided. 28 days' notice is required.

The Objection to Trustee's Final Report 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 Trustee's Final Report that Plan has been completed is xxxx.

Creditor Charles Evans ("Objector") objects to the Trustee's Final Report and Account ("Trustee") of Jerline Linda Wallace ("Debtor") on the basis that Debtor's Chapter 13 Plan calls for payment of 100% of all claims and the Trustee's report and account, if approved, would close the administration of the estate without the Trustee having paid 100% of Objector's claim.

DISCUSSION

Trustee has not responded to the Objection, nor has the Debtor responded to the Objection.

In considering this Objection, the court wades back into the mire of these Chapter 13 proceedings which are an outgrowth of the Objector's and Debtor's divorce proceeding in State Court.

Debtor's Motion to Sell [PGM-5]

Related to the instant Objection is Debtor's Motion to Sell property of the estate filed August 18, 2020. Dckt. 145. Debtor's Motion was granted, and by agreement of Debtor and Objector the following language was to be included in the order:

> The net proceeds of sale, after paying taxes and costs of sale, including commissions, escrow fees, the first mortgage lien, and the lien and recorded judgments of the Division of Labor

> Standards Enforcement, shall be split equally between Mr. Evans and this Chapter 13 bankruptcy estate and each shall receive his or its respective share of the sale proceeds directly through escrow.

Id., at 2:2. And incorporated into the Courts order approving the Motion to Sell as:

> After payment of taxes and costs of sale, the net proceeds of the sale shall be split equally between Creditor Charles Evans and the bankruptcy estate and each shall receive their respective shares through escrow.

Order, Dckt. 163, at ¶ C.

In the Objector's timely Conditional Opposition to the Debtor's Motion to Sell the Property filed on September 1, 2021, Objector states:

> Mr. Evans does not object to the sale per se, but does assert that he is entitled to receive his one-half share of the seller's net proceeds of sale directly through escrow, and not through the debtor's chapter 13 plan. Mr. Evans will not object to the sale if the order allowing the sale makes it clear that Mr. Evans is entitled to his share of the seller's net proceeds of sale directly through escrow.

Conditional Opposition, p. 1:22-26; Dckt. 155. The Conditional Opposition concludes requesting the inclusion of the language to split the net proceeds as reviewed above. *Id*., p. 2.

Objector's filed a "sur reply" to Debtor's Motion to Sell, filed September 14, 2020, Dckt. 160, the afternoon before the hearing. Such eve of hearing filings are not provided for in the law and motion rules of this Court. L.B.R. 9014-1. In this eve of hearing sur reply, Objector states a disagreement with Debtor's reply concerning Debtor's reduced claim of $22,310.79 at issue in the instant Objection. *Id*., at 2:10. Objector discusses the nature of the claim and that it arises from the Marital Separation Agreement's ("MSA") intention to require Debtor pay the "household bills" until the property was sold. *Id*. He asserts Debtor did not keep them current, and that his claim represents the amount that will be paid out of his share of the proceeds from sale to mortgage holder to complete the sale of the property. *Id*.

In the sur reply, Objector states that the confirmed Second Amended Plan (Dckt. 150) makes him a Class 4 creditor to be paid outside the plan by "Sale of Real Property." *Id*. Further, that the plan incorporates the MSA in any sale of real property, providing that "*All* creditors including attorney fees and Class 2 claims are to be paid in full a lump sum, upon funding of the sale of real property." *Id*.; *see also* Chapter 13 Plan, Dckt. 150, §3. Objector asserts his entitlement to be paid in full under the Second Confirmed Plan, "at least for debt relating to the sale of real property." *Id*., at 3:11.

Objector's Argument

Objector filed a Memorandum of Point and Authorities ("MPA") on March 22, 2021. Dckt. 178. As statutory support for his Objection to Trustee's Final Report Objector points the court to Bankruptcy Code Section 1302(b) incorporating Sections 704(a)(2) and 704(9) which prescribe duties Trustee shall perform in the administration of a Chapter 13 case. *Id*., at 1:24. Objector believes that Trustee failed to account for all property received, and failed to make a proper and final report and

account as required under Sections 704(a)(2) and 704(a)(9). *Id*.

Objector also cites to *In re Avery*, in which Objector believes a similar error was made by that trustee that required vacation of debtor's discharge after trustee failed to discharge his fiduciary duties to creditors of the estate. *Id*., at 2:1-16; Citing *In re Avery*, (2002 E.D. Cal.) 272 B.R. 718.

11 U.S.C. Section 1302(b) provides in relevant part:

(b) The trustee shall—

> (1) perform the duties specified in sections **704(a)(2)**, 704(a)(3), 704(a)(4), 704(a)(5), 704(a)(6), 704(a)(7), and **704(a)(9)** of this title; (emphasis added)
>
> (2) ...

incorporating by reference 11 U.S.C. Sections 704(a)(2) and 704(a)(9) :

(a)The trustee shall—

> (1) ...
>
> (2) be accountable for all property received;
>
> (3) ...
>
> (9) make a final report and file a final account of the administration of the estate with the court and with the United States trustee;
>
> (10) ...

Objector contends that Trustee failed in his duties as Trustee by failing to account for all property received and that Trustee's Final Report fails to make a proper final report and account. MPA, Dckt. 178, at 1:24. Objector specifically argues that Trustee

In re Avery

Objector cites *In re Avery* as an instance where Objector contends trustee made a similar error. *Id*., at 2:1. There, creditor AIF filed a timely proof of claim against debtor that omitted the amount of the claim and the claim type, but the omitted details could be deduced from the attachments to the proof of claim. *In re Avery*, supra, at 723-24. Nonetheless, trustee listed AIF's claim as a demand for $0.00. *Id*. Trustee's final report represented that creditors had been paid in full, despite AIF having been paid nothing and debtor's plan calling for 100 percent payment to all creditors. *Id*. The court approved trustee's final report and discharged trustee from his duties. *Id*. On review the Court held that debtor's discharge must be vacated because trustee had a fiduciary duty to hold debtor's property for the benefit of creditors. *Id.* at 734. Furthermore, the court clarified that the ambiguity regarding AIF's claim did not allow trustee to ignore and not pay it, rather trustee should have objected to it. *Id*.

Objector argues that all parties here understood Objector was claiming $22,310.79 from the

Estate over and above his one-half interest in the Dover Property. MPA, Dckt. 178, at 2:25. As in *Avery* neither Debtor nor Trustee objected to the claim. *Id*. Therefore, Trustee was required to pay Objector's claim, but did not and the Objection to Trustee's Final Report should be sustained. *Id*., at 3:1.

In essence, Objector asserts that administration of the estate has not been completed, where his unsecured claim, to which no one has objected to, has not been paid and that there is sufficient monies paid into the plan for it to be paid. Debtor received a disbursement of $42,000, according to Trustee's Final Report. Thus, Debtor should return $22,310.79 to the Trustee to properly fund the plan so that Objector's claim can be paid or Debtor will not obtain her discharge.

As part of the Objection to the Final Report, Objector requests the following specific relief from the court for Debtor to perform the Chapter 13 Plan as confirmed in this case:

> 1. The court order Debtor to return $22,310.79 from the $42,488.76 refunded to Debtor as surplus plan funds to the Trustee for the purpose of paying Mr. Evans' general unsecured claim;
>
> 2. The court determine that administration of the bankruptcy estate is not complete because the Trustee failed to comply with 11 U.S.C. section 1302(b) by failing to account for all property received under 11 U.S.C. section 704(a)(2) and failed to make a proper final report and account pursuant to 11 U.S.C. section 704(a)(9);

On this point, it appears that the Trustee has accounted for the property, but that there remains a claim to be paid before the confirmed Plan can be completed.

> 3. The court determine that the terms of the 100% chapter 13 plan have not been met;
>
> 4. That Mr. Evans is entitled to payment of his claim in the sum of $22,310.79;

On this point, a proof of claim has been filed and not objected to. An Objection to a Final Report is not a "declaration of rights" substitute for a contested matter or adversary proceeding to enforce rights; and

> 5. That the Debtor not be discharged until Mr. Evans' claim is paid;

Review of Proof of Claim and
Motion to Sell Proceedings

Objector provides some of the background relating to the Motion to Sell the Property and discussion of Objector's claim. As one will see, the "complexity" of the dissolution dispute colored the bankruptcy proceedings.

Objector filed his Second Amended Proof of Claim 12-3 on September 10, 2020. This coincided with the constructive discussions and resolutions worked out between Objector and Debtor to facilitate the proposed sale.

In Amended Proof of Claim 12-3, Objector reduced his general unsecured claim to $22,311.79. This was reduced from the prior First Amended Claim 12-2 which stated a general

unsecured claim in the amount of $532,891.44. Attachment 1 to Second Amended Proof of Claim 12-3 reviews the proceedings in this court, confirmation of the Debtor's Second Amended Plan, and the computation of the $22,311.79. In light of the authorized sale of the Property as authorized by this court and payment of half the net proceeds to Objector, he computed his remaining claim to be $22,311.79. Attachment 1, p. 3.

Objector includes as Exhibit 8 a copy of the Court Reporter's transcript from the September 15, 2020 hearing on the Motion to Authorize the Sale of Property from which Objector was to receive one-half of the net proceeds. Some portions of the Transcript relevant to the current Objection include the following:

> THE COURT: This is a motion to sell property, . . .Trustee wanted clarifications to make sure the escrow was open with a title company it was aware of. The trustee puts a demand in to get the payment.
>
> And Mr. Evans, Mr. Bass' client, had said, let's go along with this, but understand I've got some rights under a marital settlement agreement**. Mr. Evans is to receive half the net sales proceeds** after the cost of sale. **And Mr. Evans has also said, hey, wait a minute. I still have a claim to go ahead and get paid** for some of the costs and expenses relating to the property under the marital settlement agreement. . .
>
> Let me start with Mr. Enmark. With respect to how we interpreted the trustee's request and how we drafted the order for the sale, does that work for you? What do we need to potentially fix in the way we've addressed it in the tentative and the proposed form of the order?
>
> MR. ENMARK [counsel for the Chapter 13 Trustee]: How the order is drafted does work for the trustee. We would note that based on the outstanding Charles Evans' claim, we're not sure there's sufficient funds to pay everyone the 100 percent as indicated in the motion. The sale makes sense. We're not opposed to it. We're not opposed to the people being paid from it to the extent funds are available. We just want to make sure, you know, that if we get any funds that aren't allocated to a creditor, we know whether to give them to the debtor or to Evans.
>
> THE COURT: Okay. But do I understand it correctly that out of the sale escrow, you're going to pay the cost of sale, and then the proceeds get split at that point so that half drop into the estate and half into Mr. Evans pocket?
>
> MR. MACALUSO [Debtor's counsel]: Yes.
>
> THE COURT: I just want to make sure I understood that correctly. I'm just looking at Mr. Evans' reply filed yesterday. I just want to make sure I'm remembering this correctly. **And Mr. Evans says, look, my claim in bankruptcy is $22,310.79.**

And, Mr. Bass, do I understand **Mr. Evans' position** correctly that I'll go along with the sale, **we split the proceeds, and I still have a claim in bankruptcy for $22,310.79?** The rest of what I assert I'm owed, we'll slug it out in the family law court?

MR. BASS [Objector's counsel]: Well, basically, there's much more, but all of that much more will be in the family court, Your Honor. **And you're right; it's like $22,311 will be the claim still in the bankruptcy court**. . .

THE COURT: Okay. I just want to make sure I understood how you saw the waterfall of money going, as well as what Mr. Evans was expecting the trustee would be paying him with the other stuff, which is much more, will be fought out in the family court.

Let me come back to Mr. Macaluso. Now, when you look at the tentative of the ruling, the order form, with **Mr. Evans saying, hey, I'm going to have my handout to get a $22,000 in [and] change check from the trustee**, anything I need to clarify in the tentative or in the order from the debtor's perspective?

[Though Not Labeled, This Appears to be Mr. Macaluso's Response]

Just that his claim is still open for objection if, in fact -- I don't know how he went from $532 to $22,000. It would have been my understanding that it was a split 50/50, and he goes back to family court for anything else. **So I want to have the opportunity to review that claim and object to the $22,000 if appropriate**. That doesn't stop the sale.

THE COURT: Yeah. I think Mr. Bass had noted, said, look, this isn't really before the Court. We want to make it clear what we're doing just so there's no contention later that somehow we said, you know, we were just walking away with our bankruptcy tails between our legs. And by approving the sale, I'm not determining that there's an allowable $22,000 claim. You've got it on file. The burden will be on Mr. Macaluso. He has objectionable grounds to raise the objection, correct, Mr. Bass?

MR. BASS: Yes, Your Honor, I agree. Thank you.

Exhibit 8; Transcript of September 15, 2020 Hearing,(reference to transcript page number) p.3:16-p.5:16, p.5:24-7:2 (emphasis added).

Debtor's confirmed Second Amended Plan (Dckt. 118) provides for Class 4 direct payment secured claim treatment for Objectors "Marital Settlement Agreement" claim from the Sale of Real Property (Plan ¶3.10) and for a 100% dividend to Class 7 creditors holding general unsecured claims (Plan ¶ 3.14). The Second Amended Plan was confirmed by an order entered on August 28, 2020, which was approximately 18 days before the September 15, 2020 hearing on the Motion to Sell the property from which Objector would receive one-half of the net proceeds.

A review of the file in this case reflects that no objection was filed to Second Amended Proof of Claim No. 12-3. As discussed at the September 15, 2020 hearing, if Debtor had an objection to the $22,310.79 unsecured claim, then Debtor and Debtor's counsel were to object to it.

It appears that inadvertently the $22,310.79 was disbursed to the Debtor as surplus monies under the Plan. It is surprising that Debtor, who wants to complete her plan, did not immediately return the check to the Trustee or at least the $22,310.79 that is to be paid so that there is the required 100% dividend on creditors with unsecured claim. It is the proof of claim filed, unless otherwise ordered by the court pursuant to an objection or other motion, that controls for the amount of the claim, not any amount stated in the plan. Second Amended Plan, ¶ 3.02; Dckt. 118.

At the hearing, the Parties requested that the hearing be continued as the Parties address the Proof of Claim filed by Creditor. The Debtor agreed to deposit $22,310.79 with the Clerk of the Court, to be held pending determination of whether Debtor will object to the claim, not object, or the Parties agree to determine they dispute as to this claim in another forum.

June 22, 2021 Hearing

As of the court's drafting of this pre-hearing disposition, no additional or supplemental pleadings have been filed. The lack of any response is surprising given that the prior hearing was conducted on April 20, 2021, sixty days before the June 22, 2021 hearing and the parties are supposed to be diligently working on this matter.

At the hearing, xxxxxxxxx

9. 17-27346-E-13 KENNETH TABOR MOTION TO MODIFY PLAN
SS-8 Scott Shumaker 5-18-21 [219]

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 May 18, 2021. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

The debtor, Kenneth Roger Tabor ("Debtor") seeks confirmation of the Modified Plan after falling behind on plan payments due to not being able to close deals and receive payment for work due to the closure and partial staffing of the Department of Motor Vehicles. Declaration, Dckt. 221. The Modified Plan provides for monthly payments of $1,945.00 to be paid starting on June 2021 (month 43 of the plan) through 84th month of plan, and a 100 percent dividend to unsecured claims totaling $0.00. Modified Plan, Dckt. 223. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on June 2, 2021. Dckt. 227. Trustee opposes confirmation of the Plan on the basis that the Modified Plan fails to specify how Debtor will cure his post-petition arrears.

DISCUSSION

Post-Petition Arrearage

Trustee asserts that due to Debtor's failure to make plan payments, Trustee has been unable to make all of the due payments to class 1 creditor BSI Financial Services Inc. According to Trustee, the Plan does not specify at what monthly payment the post-petition arrears will be cured; the additional post-petition arrearage due; and the prior post-petition arrearage amounts.

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

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

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

10. 17-22651-E-13 WW-5 MARIO/CHRISTINE BORREGO Mark Wolff MOTION TO MODIFY PLAN 5-18-21 [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 Not Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 19, 2021. By the court's calculation, 34 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

Movant did not provide sufficient notice. At the hearing, xxxxx

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 xxxxx.

The debtors, Mario Manuel Borrego and Christine Joy Borrego ("Debtor") seek confirmation of the Modified Plan because they have been affected by COVID-19 and because Debtor Mario faced a reduction in income due to an injury. Declaration, Dckt. 120. The Modified Plan provides for payments of $1,025.00 for 12 months to complete the plan beginning May 25, 2021, and a zero percent dividend for unsecured claims totaling $37,065.31. Modified Plan, Dckt. 115. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee") filed an Opposition on June 2, 2021. Dckt. 125. Trustee opposes confirmation of the Plan on the basis that:

A. The proposed plan fails the Chapter 7 liquidation analysis.

B. Debtor has failed to file supplemental Schedules I or J reflecting their

current financial situation.

C. Debtor has failed to provide updated information on their dependents

D. Debtor has failed to turn over W-4 forms

E. There is a possible mislabeling of a 2(B) claim as a 2(A) claim

DISCUSSION

Debtor Fails Liquidation Analysis

Debtor's plan fails the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Trustee states that Debtor's non-exempt assets total $54,854.00; yet in the modified plan, Debtor proposes to pay unsecured creditors a zero percent (0%) dividend. Because liquidation of the non-exempt assets would lead to creditors with unsecured claims being entitled to at least one cent, Debtor's proposal to pay them zero percent fails the Chapter 7 liquidation analysis.

Feasibility

The Debtor included in their original expenses a $495.60 payment for retirement fund loans. The debt was supposed to be paid off in 36 months, and this is reflected in the fact that payments in Debtor's plans were to increase from $715.00 to $1,165.00 beginning on month 37 of the plan. In Debtor's amended Schedule J, Christine Borrego continues to budget $295.50 in retirement fund loan payments.

The Debtor have also increased voluntary retirement contributions from $263.06 and $319.82 to $277.81 and $624.00 based on an increased income. Trustee opposes such increase due to Debtor providing zero dividends to creditors with unsecured claims.

Trustee notes that Debtor's Supplemental Schedule J reflect 2 dependents; a 25-year-old son and a 26-year-old daughter, who appear to be the same age as when original Schedule J was filed even though 4 years have passed. Debtors provide no information about these dependents, such as if they continue to reside in the home with the Debtor, or if they contribute financially in any way.

Trustee also notes that Debtor has failed to include language previously confirmed providing that Debtor is to provide Trustee with copies of any new W-4 forms prepared and/or submitted to their employer during the pendency of the Chapter 13 Plan.

Lastly, Trustee seeks clarification regarding a Class 2(A) stated as a purchase money security interest claim and a Class 2(B) claim regarding a 2010 Toyota Corolla both for the same amount but Trustee believes the double inclusion was an oversight.

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

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Mario Manuel Borrego and Christine Joy Borrego ("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.

11. **20-24660-E-13 SLE-1** | **FRANCISCO SOLORIO** **Steele Lanphier** | **MOTION TO CONFIRM PLAN** **5-5-21 [61]**

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 May 5, 2021. By the court's calculation, 48 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

The debtor, Francisco Javier Solorio ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly plan payments of $3,300 for the remainder of the 60 month plan, and a 0% dividend to unsecured claims totaling $1,713.54. Amended Plan, Dckt. 65. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on June 7, 2021. Dckt. 72. Trustee opposes confirmation of the Plan on the basis that:

A. The Plan requires three motions to value collateral, none of which have been filed to date.

B. Debtor is delinquent in plan payments.

C. Debtor's Plan may not be the Debtor's best efforts under 11 U.S.C. § 1325(b).

D. Plan fails Chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4).

DISCUSSION

Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The Plan requires three motions to value the collateral of Cap One Auto, Ally, and Capital One Bank. None of which have been filed. Trustee asserts that failure to file motions called for by the Plan is arguably a default under the plan, as the Debtor is failing to comply with the Plan, (11 U.S.C. § 1325(a)(6). Dckt. 72. According to Trustee, failure to succeed with these motion would extend the plan and additional 64 months for a 71 month Plan. The Plan exceeds the length allowed, 11 U.S.C. §1322(d.)

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

Delinquency

The Chapter 13 Trustee asserts that Debtor is $50.00 delinquent in plan payments, which represents a fraction of the $3,250.00 plan payment. According to Trustee, the next scheduled payment of $3,300.00 is due on June 25, 2021, then the payments will increase to $3,337.14, per the Notice of Mortgage Payment Changed filed on May 26, 2021, starting on July 25, 2021 for the remainder of the Plan. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Failure to Provide Disposable Income

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

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

under the plan will be applied to make payments to unsecured creditors under the plan.

According to Trustee, Debtor claims to be below the median income even though it appears they are over the median income and could have additional disposable income to pay toward the Plan. The Debtor has not amended From 122C-1, which currently indicates that Debtor's monthly income is $9,500.00 per month, or $114,000 annually. Furthermore, the Debtor is claiming six people in the household, for a median family income of $119,315.00. However, at the Meeting of Creditors, Debtor testified that two of the dependents were no longer living with him. If there are only four dependents in the six months prior to filing, the applicable median family income would be $101,315.00, and thus Debtor would be over the median. Dckt. 72.

Debtor Fails Liquidation Analysis

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Debtor's Plan proposes to pay no less than a 0% dividend to unsecured creditors in 60 months. Debtor has supplied insufficient information relating to the real property/assets to assist the Chapter 13 Trustee in determining the value of the property/assets. Debtor fails to report the Information Leading to an Accurate Valuation of the Property/Assets.

Previous Chapter 13

Debtor's Motion to Confirm and Declaration in Support do not explain why this case will work when prior Chapter 13 cases, 18-26962 and 20-20026, were not successful.

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

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

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

12. **21-21161-E-13** **CINDY RONQUIST** **OBJECTION TO CONFIRMATION OF PLAN BY DENISE R. WINN WRIGHT**
12 thru 13 **Nikki Farris** **5-18-21 [14]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and Chapter 13 Trustee on May 18, 2021. By the court's calculation, 35 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

Denise R. Winn Wright ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

A. The Plan was not proposed in good faith.

B. The Debtor's Petition and Schedules are fraudulent.

Creditor is Debtor's counsel in the Dissolution of Marriage case in Modoc County Superior Court case number FL-20-2019.

DISCUSSION

Creditor's objections are well-taken.

Bad Faith

Debtor retained bankruptcy counsel on March 3, 2021 and attended her pre-filing counseling session on March 6, 2021. Dckt. 14: 18-20. Creditor asserts that Debtor intentionally concealed her bankruptcy case from the Creditor, allowing the Creditor to continue working on the dissolution of marriage case even though Debtor had no intention of paying Creditor. Creditor alleges that post-petition charges therefore arose as a result of acquiring services by fraud.

On March 4, 2021, the Judgment for Dissolution of Marriage on reserved issues was entered. At the time of receiving notice of the bankruptcy proceedings, Creditor had prepared various documents related to the Dissolution of Marriage proceeding. Further, according to Creditor, Debtor was still maintaining communications with Creditor through the month of April.

According to Creditor, on May 13, 2021 (at and after the 341 Hearing), Debtor revoked via text message, email, and a letter, previous written and verbal conversations. In these communications, Debtor claimed legal services were complete at the time of the final Judgment. Debtor back dated the letter to May 8, 2021 so that it may appeared that the letter sent to Creditor prior to the Meeting of Creditors but the envelope shows the letter was mailed on March 14, 2021.

Failure to Provide for a Secured Claim

Objecting Creditor represented Debtor in a dissolution of marriage case in Modoc County Superior Court, Case No. FL-20-019 Creditor asserts a claim of $35,854.57 in this case. The Plan modifies the rights of the Creditor (whose claim is secured by an interest in all of Debtor's property) by providing that Creditor is an unsecured creditor. 11 U.S.C. § 1322(b)(2). The Creditor's claim is a secured claim based on an attorney charging lien signed by Debtor on March 4, 2020.

11 U.S.C. § 1322(a) is the section of the Bankruptcy Code that specifies the mandatory provisions of a plan. It requires only that a debtor adequately fund a plan with future earnings or other future income that is paid over to the Chapter 13 Trustee (11 U.S.C. § 1322(a)(1)), provide for payment in full of priority claims (11 U.S.C. § 1322(a)(2) & (4)), and provide the same treatment for each claim in a particular class (11 U.S.C. § 1322(a)(3)). Nothing in § 1322(a) compels a debtor to propose a plan that provides for a secured claim, however.

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

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

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

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

§ 1325(a)(5)(B)), or

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

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

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

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

Fraudulent Filing

Creditor alleges that the accuracy of the Plan's schedules, statements of the debts, expenses, and percentage of repayment of debt, and inaccuracies constitute an attempt to mislead the bankruptcy court.

Debtor failed to list in her Schedules a Pole Barn that was valued at $61,676, and attempted to Claim at the Meeting of Creditors that it had no value.

Creditor points the court to Debtor's 2021 Toyota Tacoma. Creditor objects to any priority payment over Creditor for this vehicle as the January 29, 2021 agreement with Member's 1st Credit Union was well after the March 4, 2020 attorney charging lien. The March 4, 2020 attorney charging lien should take priority over the automobile payment.

Creditor also points the court to a 2017 Subaru Impreza listed in Debtor's schedules where the vehicle has been confirmed as property of Debtor's daughter and the dissolution judgment confirmed that daughter was responsible for the auto loan. Debtor also list s a 2017 Keystone Cougar but fails to list her ex-husband as equally responsible for the debt as it was confirmed in the dissolution judgment. Creditor also alleges that the household goods listed by Debtor as having of value are worth more, where the dissolution judgment provided for a $9,703.00 equalization payment owed by Debtor to her exhusband that included household items valued at more than $300.00. Creditor also alleges that Debtor owns more than the four firearms she listed and ammunition, which together are valued over $15,000.

According to Creditor, at the Meeting of Creditors, Debtor admitted that she was holding $5,000 in cash for the sale of cattle that occurred in February 2021, which is more than the $5.00 Debtor listed on her Schedule A/B. Creditor also notes that Debtor failed to disclose her one-half investment interest of a Surprise Valley Electric that was awarded to her as part of the dissolution judgment, and her permanent spousal support until death of either party in the amount of $200. Debtor claimed she owned farm equipment totaling $1,500 but the dissolution judgment lists numerous farming items, including rakes, fences, shovels, and feeders valued at more than $1,500.

Creditor also objects to Debtor exemption pursuant to the Wildcard Exemption where Debtor has seriously undervalued her property in Schedule A/B and then claimed over the maximum amount allowed under the wildcard exemption.

Creditor also "objects" to Debtor's Schedule D on the basis that Debtor failed to list Creditor as a creditor with a secured claim and further objects to Schedule E/F, where Debtor has listed Creditor as an unsecured creditor. Creditor also objects to Debtor's Schedule H where Debtor has failed to list her ex-husband as a co-debtor for the 2017 Cougar Trailer, the 2019 Subaru Ascent, and the PG&E retirement loan that she paid off and will be reimbursed for under the division of the PG&E 401k QDROs. Creditor further objects to Debtor's Schedules I and J and the statement of Financial Affairs on the basis that Debtor has failed to provide information regarding her income, her expenses are unreasonable and incorrectly stated that her marital dissolution proceeding was concluded. Creditor also objects to the Debtor's Statement of Your Current Monthly Income and Calculation of Commitment Period, arguing that Debtor has purposely manipulated her income to be low and has not been truthful in regards to her earning capacity.

Lastly, the Debtor's Plan does not properly treat secured creditors' claims under 11 U.S.C. § 1325(a)(5) because the interest rate paid on secured claims is too low, and the valuation of the creditors' collateral is too low. The amount of the proposed payments and the amount of the debtor's surplus are inequitable. The Plan does not truly represent the debtor's best efforts.

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

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

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

13. **21-21161-E-13 DPC-1** **CINDY RONQUIST** **Nikki Farris** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 5-19-21 [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 19, 2021. 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 Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing ----------.

The Objection to Confirmation of Plan is sustained.

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

A. Debtor fails the Chapter 7 liquidation analysis.

B. The Plan may not be feasible.

C. Debtor's Plan may not be the Debtor's best efforts under 11 U.S.C. §1325(b).

DISCUSSION

Trustee's objections are well-taken.

Debtor Fails Liquidation Analysis

Debtor's plan fails the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Trustee states that the Debtor's assets were not listed or exempted on her schedules and Debtor has failed to comply with Trustee's requests. Further, the Debtor testified at the Meeting of Creditors that she sold a Cougar Trailer for its fair value to a friend. The Trustee is not certain unsecured creditors will receive at least what they would in a hypothetical Chapter 7 liquidation as required under 11 U.S.C. §1325(a)(4).

Failure to Afford Plan Payment / Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). According to Trustee, at the Meeting of the Creditors, the Debtor testified that she owns cattle and therefore, has income and expenses related to owning the cattle. Consequently, Trustee requested that Debtor amend Schedule I (to reflect the income from the cattle) and Schedule J (to list related expenses). However, no amendment has been filed and Debtor has failed to carry her burden of showing the plan complies with U.S.C. § 1325(a)(6). Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Not Best Effort

Trustee alleges that the Plan violates 11 U.S.C. § 1325(b) however no grounds are provided for this particular objection.

Creditor Denise Winn Wright's Objection having been sustained, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is denied confirmation on Trustee's Objection as well. The Objection is sustained, and the Plan is not confirmed.

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

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

14. 18-21488-E-13 CLH-12 DANIEL/ALLISON BRENNAN Charles Hastings MOTION TO MODIFY PLAN 4-30-21 [243]

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 30, 2021. By the court's calculation, 53 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

The debtors, Daniel Lawrence Brennan and Allison Lyn Brennan ("Debtor") seek confirmation of the Modified Plan due to a significant reduction in income as a result of the COVID-19 pandemic. Declaration, Dckt. 245. The Modified Plan provides for the following:

1. $1.00 for 1 month,
2. $5,000.00 for 13 months,
3. $5,450.00 for 13 months,
4. $252,672.94 for 1 month,
5. $5,450.00 for 3 months,
6. then $1,000.00 for 1 month,
7. $2,500.00 for 3 months,
8. 3,094.08 for 15 months,
9. then $3,644.08 for 29 months, and
10. a zero (0) percent dividend to unsecured claims totaling $7,740.73.

Modified Plan, Dckt. 246. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response on May 25, 2021. Dckt. 250. Trustee opposes confirmation of the Plan on the basis that:

A. Plan Payments to date are not correct.

B. Trustee is uncertain if priority creditors will object to Debtor's special provision regarding priority claims.

DISCUSSION

Plan Payments

According to Trustee, plan payments should be whatever has been paid to date and then $3,094.08 from May 2021 to May 2022, then $3,664.08 from June 2022. Trustee states that May 2021 is the 38th Month of the Plan, and the Plan payments through May 2021 total $399,772.94.

Trustee asserts that the Modified Plan should clearly provide just that the Plan payments through May 2021 total aggregate amount of $399,772.94, rather than a series of payments for a month or two at a time.

At the hearing xxxxxxxx

Priority Claims Provision

According to Trustee the plan would take 79 months to complete if Debtor were to pay priority claims in full. However, Debtor has added a special provision regarding priority claim where they state that "Any amount owing remaining on the priority claims following completion of the Plan will not be discharged and will remain due by the Debtors." Proposed Plan, Section 7, at 9. Trustee is uncertain if the relevant priority creditors object to the proposed plan.

The Trustee does not direct the court to any statutory provision concerning a Chapter 13 plan and the treatment of priority unsecured claims. The apparent provision could be 11 U.S.C. § 1322(a)(2), in which Congress specifies (emphasis added):

> § 1322. Contents of plan
>
> (a) **The plan**—
> . . .
> (2) **shall provide for the full payment**, in deferred cash payments, **of all claims** entitled to **priority** under section 507 of this title, unless the holder of a particular claim agrees to a different treatment of such claim;

This is discussed in Collier on Bankruptcy as follows:

> ¶ 1322.03 Payment of Priority Claims; § 1322(a)(2)

> Section **1322(a)(2) requires that every chapter 13 plan propose payment in full of all priority claims.** There are **only two exceptions** to this requirement. **First, the holder of the priority claim may consent to different treatment.** Second, if the priority claim is a domestic support obligation that has been assigned to a governmental unit, or is owed directly to a governmental unit, the debtor need not pay that obligation in full provided the plan provides that all of the debtor's projected disposable income over five years will be devoted to the plan. Otherwise, by virtue of section 1322(a)(2), the plan must propose that all allowed claims entitled to priority under section 507, including filing fees and allowed administrative expenses, wage claims, consumer debt claims, and tax claims, be paid in full.

8 Collier on Bankruptcy P 1322.03 (16th 2021) (emphasis added).

Debtor's Modified Plan states that there are $283,828.17 in priority unsecured claims. Mod. Plan, ¶ 3.12; Dckt. 246. These include priority unsecured claims of the California Franchise Tax Board and the Internal Revenue Service. Proof of Claim 1-3 and Proof of Claim 2-3. The court cannot identify any consents to incomplete payment of the priority claims having been filed in support of the present Motion and confirmation of the Modified Plan.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by the debtors, Daniel Lawrence Brennan and Allison Lyn Brennan ("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.

15. 20-20690-E-13 SS-4 JUSTIN/ANGELA ROBINSON Scott Shumaker MOTION TO MODIFY PLAN 5-18-21 [131]

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 May 18, 2021. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

The debtors, Justin Lee Robinson and Angela Alyssa Robinson ("Debtor"), seek confirmation of the Modified Plan to account for a forbearance agreement and that a new plan will be filed once the forbearance period ends. Declaration, Dckt. 133. The Modified Plan provides for payments of $14,420.00 paid in through month 14, then $827.00 for months 15 through 19, during a forbearance period and a zero (0) percent dividend to unsecured claims totaling $154,000. Modified Plan, Dckt. 135. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on June 2, 2021. Dckt. 139. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor is delinquent in plan payments.

B. Plan terms only provide for payment through the month of September and not for the required 60 months.

C. Schedules I and J were filed as exhibits only.

D. Debtor fails to explain the delinquency existing under the plan which required the forbearance.

E. Finally, that the Additional Provisions provide for paying Debtor's counsel, but fails to provide for the secured claims distributions which Debtor's counsel is to be paid in priority to.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is $180.00 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).

Plan Term

According to Trustee, Section 2.03 proposes a commitment period of 60 months while the non-standard provisions propose a payment of $827.00 per month through September only and relies on another modified Plan to be filed in October to provide the amount of the remaining payments.

Trustee is uncertain if Debtor will be in material default with respect to the proposed plan if they do not file another modified Plan in October, or if that failure would mean the plan has terminated under 11 U.S.C. §1307(c)(8), or if in October Debtor has completed all payments required under the plan and will be entitled to discharge under 11 U.S.C. §1328(a).

Schedules I and J

Trustee notes that Debtor filed Supplemental Schedules I and J as exhibits only and this can make it potentially difficult for parties to find Debtor's most recent budget on file with the court. See Dckt. 134.

On June 16, 2021, Debtor filed the Supplemental Schedules with the court and can now be found on the case's docket. Dckt. 142.

Basis for Modification

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor seeks to modify the plan to account for a forbearance agreement. Trustee notes that Debtor had been delinquent in plan payments as stated in the Motion to Dismiss heard on May 12, 2021. Debtor's response to that motion was that they were seeking forbearance through their Lender.

Debtor has obtained such a forbearance. Yet, as noted by Trustee, Debtor has failed to explain what caused the delinquency and provides a vague statement in their Declaration in support of the instant motion that "…we have changed the nature of our business, and are beginning to see positive results" Declaration, at 2:10-11.

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

Pre-Petition Mortgage Arrearage

Trustee asserts that the Additional Provisions of the proposed plan state the attorney's fees shall be paid in full prior to distribution to Class 1 arrears or general unsecured creditors, but provides no monthly dividend. (The monthly dividend under the confirmed plan is $797.87 and the Trustee has made $0.00 disbursements.) The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. See 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearage.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Justin Lee Robinson and Angela Alyssa Robinson ("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.

16. **20-23896-E-13 HDP-3** **16 thru 17** | **MILTON PEREZ** **Mary Ellen Terranella** | **CONTINUED AMENDED MOTION TO DISMISS CASE** **12-28-20 [59]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on December 28, 2020. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss is xxxxx

1 Oak Ventures Step Fund LLC ("Creditor"), seeks dismissal of the case on the basis that the debtor, Milton Raul Perez ("Debtor"), does not provide for full payment of Creditor's pre-petition arrearage.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on January 12, 2021. Dckt. 64. Debtor contends that the proposed amended plan provides for a refinance of Creditor's claim, which will pay it in full. *Id.*, at 2. Additionally, Debtor asserts that there is significant equity to support the refinance of the second mortgage where Debtor's residence is valued at $450,000 and the first mortgage has a balance of $89,344.00. *Id.*

DISCUSSION

Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts $128,194.64 in pre-petition arrearage.

Creditor argues that the Plan does not propose to cure those arrearage in their entirety and does not offer to pay the arrears in equal monthly installments. According to Creditor, Debtor's Amended Plan proposes to pay an "arrearage dividend" of $595.99 monthly along with an adequate protection payment of $815.86 together with a proposal to refinance to pay off Creditor in full within 12

months of confirmation. Creditor does not consent to these terms.

The court has addressed Debtor's prosecution of this case in the Civil Minutes for the hearing on Debtor's Motion to Confirm the Amended Plan (DCN: MET-3).

At the hearing, Debtor's counsel and Creditor's counsel did not present an agreed to reasonable period, during which Debtor would make adequate protection payments, for the Debtor to obtain a refinance. The court addressed with the parties the concept of adequate protection and the use of an Ensminger like provision for the diligent prosecution of a refinance or sale of the Property.

Creditor expressed concern/skepticism over the Debtor being able to diligently seek either a refinance or sale, noting the history of defaults.

The court noted that a substantial equity exists in the Property above the lien and homestead exemption, and that conversion of this case to Chapter 7 and a trustee pursuing a sale of the Property appeared to be in the best interests of all creditors. If Debtor is unable, as Creditor argues/fears, to diligently prosecute a refinance or sale, it would not be proper to just dismiss and allow creditor to take the substantial value in the property in excess of its lien as extra "profit" for Creditor.

February 23, 2021 Hearing

As discussed in the Civil Minutes from the hearing on the Motion to Confirm the Chapter 13 Plan in this case, the court has determined that the hearing should be continued to determine whether Debtor is legally competent to obtain a refinance of the real property in which the estate has an equity of more than $111,000, or if a limited purpose personal representative needs to be appointed because Debtor lacks the legal competency to obtain such refinancing or to sell the property if necessary.

The court continues the hearing on the Motion to Dismiss to allow the bankruptcy estate to protect the $111,000+ in equity in property of the bankruptcy estate.

June 22, 2021 Hearing

As of the court's drafting of this pre-hearing disposition, no other documents or pleadings have been filed for this motion.

At the hearing xxxxxxxx

17. **20-23896-E-13 MET-3** | **MILTON PEREZ** **Mary Ellen Terranella** | **CONTINUED MOTION TO CONFIRM PLAN** **12-4-20 [47]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on December 4, 2020. By the court's calculation, 53 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is xxxxx

The debtor, Milton Raul Perez ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for payments of $1,600.00 for 36 months, and a 100 percent dividend to unsecured claims totaling $5,894.00. Amended Plan, Dckt. 49. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CREDITOR'S OPPOSITION

1 Oak Ventures Step Fund LLC ("Creditor"), holding a secured claim, filed an Opposition on December 28, 2020. Dckt. 55. Creditor opposes confirmation of the Plan on the basis that the plan does not provide for full payment of Creditor's pre-petition arrearage.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on January 12, 2021. Dckt. 61. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor fails to explain why the plan proposes refinance within 12

months of the order confirming the plan.

B. Debtor misclassifies a creditor with a secured claim as a Class 4 where Creditor has filed a proof of claim claiming Debtor is in default.

Debtor filed a Reply addressing Trustee's Opposition. Dckt. 66. The Reply is discussed below.

DISCUSSION

Failure to Cure Arrearage of Creditor and Proposed Refinance Procedure

Creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts $128,194.64 in pre-petition arrearage.

Creditor argues that the Plan does not propose to cure those arrearage in their entirety and does not offer to pay the arrears in equal monthly installments. According to Creditor, Debtor's Amended Plan proposes to pay an "arrearage dividend" of $595.99 monthly along with an adequate protection payment of $815.86 together with a proposal to refinance to pay off Creditor in full within 12 months of confirmation.

In the Amended Plan, Debtor puts this Creditor in both Class 1, as if Debtor is paying the claim as a Class 1 Claim, but also providing for it in the Additional Provisions. Plan, § 3.07 and Additional Provisions; Dckt. 49.

Debtor seeks to make an adequate protection payment of $815.86, which is identified as the currently monthly mortgage installment, and the arrearage and Creditor's claim accelerated and paid in full within 12 months.

Refinance Procedure

Trustee objects to confirmation on the basis that Debtor's plan proposes a refinance within 12 months of the order confirming the plan and provides evidence that Debtor may qualify for such refinancing but fails to explain why the plan proposes potentially to wait up to 12 months for the refinance and not sooner.

In the Reply, Debtor does not expect the refinance to take this long but argues that the potential wait of up to 12 months was stated in abundance of caution allowing for the current pandemic conditions that may affect the process from appraisal taking longer, underwriting professionals working from home, and loan approval taking longer due to current low mortgage rates and increases in demand.

Addressing Creditor's Secured Claim

In looking at the Plan in this case, Debtor's only "problem" is addressing Creditor's claim. Debtor states that the obligation due PHH Mortgage Services is current and there are only ($5,894) that will be paid a 100% dividend through this thirty-six month plan. Debtor is also using the Plan to reduce the claim secured by a 2007 Yamaha Dirt Bike from ($2,211) to ($365), which would appear to add

around $1,900 to general unsecured claims. Plan, Dckt. 49.

The monthly plan payment is $1,600. *Id*., ¶ 2.01. From that, the necessary payments during the first year would be:

Plan Payment	$1,600
Chapter 13 Trustee Fee (10%)	($ 160)
Debtor's Counsel Fees ($3,000) Amortized Over 12 Months	($ 250)
Creditor Current Monthly Payment	($815)
Class 2 Dirt Bike Payment	($365)
Surplus Plan Payments Before Beginning Unsecured Claim Dividend	$ 10

During the first year of the Plan there would be an "extra" $10 a month that could go to accelerating the claim of Creditor and reducing the amount of the refinance, but it would only be a very modest amount.

Class 4 Misclassification

Trustee further objects on the basis that creditor PHH Mortgage Corporation holding the first mortgage for Debtor's residence has filed a proof of claim stating that the Debtor is delinquent $6,715.47, showing no payment for May, June, July 2020, or August 2020, as well as accrued fees from the prior bankruptcy, accrued interest from August 1, 2020 to August 11, 2020, as well as a projected escrow shortage.

In the Reply, Debtor explains that PHH Mortgage was classified as a Class 4 claim because Debtor made the pre-petition payments in August of 2020 but that PHH Mortgage has not amended its proof of claim to reflect the payments made. Debtor further asserts that counsel has communicated with PHH Mortgage to ascertain whether a further amended claim will be filed but has not received a response and that Debtor may have to file an objection to the claim if it is not amended.

It is unclear whether Creditor is adverse to any reasonable time period for Debtor to either "put up or shut up" on getting a refinance done, or that Creditor is opposed to locking Debtor into a reasonable time line to have Creditor being repaid.

Looking at Proof of Claim 5-1 filed by Creditor, it acquired the claim from Westwood Associates. The Proof of Claim states that the Property securing the Claim has a value of $450,000. Proof of Claim 5-1, ¶ 9. The interest rate on the secured claim is stated in Proof of Claim 5-1 to be 11.5%, which is 283% higher than the current 30 year residential loan interest rate of 3% available for good residential borrowers.

It appears that the claim of U.S. Bank, N.A. is secured by the senior deed of trust recorded

against the Property is in the amount of ($87,757.22), less any payments made on that amount. Proof of Claim No. 2-1. The court says "appears" in that the deeds of trust attached to Claim No. 2-1 and Creditor's Claim 5-1 are recorded on the same day at the same time in 2007, but the Document Recording Number for Creditor's deed of trust is one number higher than that for the deed of trust attached to Proof of Claim 2-1.

The $450,000 value stated by Creditor is consistent with the $450,000 value stated by Debtor on Schedule A/B. Dckt. 1 at 11.

With a value of $450,000 and a senior secured debt of ($87,757.22), there is projected to be $362,242.78 in value securing Creditor's stated claim of ($215,350.41), Proof of Claim 5-1, providing an equity cushion of $147,000 (63.8% equity cushion). Even taking into account costs of foreclosure, taking possession of property, and post-foreclosure resale costs, there is significant adequate protection for Creditor to be considered for a diligent, good faith refinance effort. [Fn.1.] If the Debtor were to sell the Property for $450,000, after costs of sale (estimated at 8%) and paying the secured claims, Debtor would pocket around $110,000, and have no other significant debt to pay.

FN. 1. On Schedule D, Debtor lists Creditor as having a secured claim of ($120,755). Dckt. 1 at 20. No objection to Proof of Claim 5-1 has been filed by Debtor, indicating that there may have been an error by Debtor in computing Creditor's claim.

Debtor commenced this case on August 11, 2020. Interest rates for residential real estate mortgages are at historically low - at least when one considers the 20th and 21st Centuries - rates. If Debtor can refinance, then now is the time. If Debtor cannot refinance, then he has the "hard" decision to make of whether he wants to sell with real property at historically high values (fueled in part by the historically low interest rates) and maximize his exemption recovery and any surplus, or delay, have interest rates rise and the value of the Property drop as he tries to sell it with a foreclosure sale pending outside of bankruptcy.

At the hearing, Debtor's counsel and Creditor's counsel did not present an agreed to reasonable period, during which Debtor would make adequate protection payments, for the Debtor to obtain a refinance.

Debtor's Objection to Claim of PHH Mortgage

Debtor filed an Objection to the Claim of PHH Mortgage on February 9, 2021. Dckt. 72. The Objection is set for hearing on March 30, 2021. Debtor objects to the Proof of Claim on the basis that Debtor made the pre-petition payments in the amount of $4,189.68 in August of 2020 but that PHH Mortgage has not amended its proof of claim to reflect the payments made.

February 23, 2021 Hearing

On February 16, 2021, Debtor filed a Status Report. Dckt. 76. Debtor seeks to shorten the time period to complete the refinance to June 30, 2021.

On February 18, 2021, Creditor Oak Ventures filed a Supplemental Opposition addressing

the Status Report. Dckt. 80. Oak Ventures first asserts that the Plan cannot be confirmed because Debtor's objection to the U.S. Bank N.A. (PHH loan servicer) claim stating that no pre-petition arrearage existed has not been adjudicated.

Second, Oak Ventures adamantly states that it refuses to agree to a deadline of June 30, 2021 to be paid in full through a refinance, notwithstanding monthly adequate protection payments of $815.86 a month pending the June 30, 2021 deadline.

Oak Ventures does acknowledge that this court may consider some adequate protection factors in giving a debtor a commercially reasonable time in which to either refinance or sell property so as to not forfeit a large equity to a creditor such as Oak Ventures. If the court were to do so, Oak Ventures suggests that "to be fair," the time period should be shortened 30 days to May 31, 2021, and not the (apparently) excessive period to June 30, 2021.

Oak Ventures then suggests that if it put to the test of having to wait until the May 31, 2021, deadline, the stay should be automatically terminated and it should not be burdened with having to file an *ex parte* motion requesting that such relief is proper.

Oak Ventures' Supplemental Opposition raises significant concerns with this case – significant concerns as to Oak Ventures and its good faith. U.S. Bank, N.A. Proof of Claim No. 1-1 states a claim of ($89,344.38). Oak Ventures' claim is ($219,614.10). Proof of Claim 5-1. Oak Ventures also states (admits) in Proof of Claim 5-1 the real property of the Bankruptcy Estate securing its claim and the U.S. Bank N.A. claim to have a value of $420,000. Proof of Claim 5-1, ¶ 9.

Thus, Oak Ventures demonstrates that it has an equity cushion of $111,041.52 – a 50% equity cushion.

Debtor has, using Oak Ventures' statement of value in Proof of Claim 5-1, claimed a $75,000 exemption in this asset (Schedule C, Dckt. 1 at 18), which leaves a substantial equity above the exemption for the bankruptcy estate. The equity for the bankruptcy estate may be even higher Debtor stating a value of $416,000 on Schedule A/B (which also states that the property was purchased for $420,000 in March of 2007, which the court notes was a the peak of the last real estate boom). It appears that Debtor's statement of value may be understated or a "net sales price" after deducting 8% for costs of sale. If so, then the value would be $450,000 ($450,000 - (8% x $450,000) = $414,000).

The evidence presented indicates that Debtor may not be able, due to the lack of commercial finance knowledge, to reasonably prosecute a refinance of the property. If the court were to set the May 31, 2021, or even the June 30, 2021 deadline, it might be signing the financial death warrant for the bankruptcy estate and allowing Oak Ventures to pocket the additional $111,000 + of equity in the property, in addition to its 11.25% interest

Oak Ventures has convinced the court that confirmation of the Plan at this time is not appropriate. Rather, the court must continue the hearing to determine whether Debtor is legally competent to seek and obtain a refinance to protect the $111,000+ equity for the bankruptcy estate. The best way, as shown by Oak Ventures, to determine that is see whether Debtor can accomplish this. If

not, after a commercially reasonably period of time, the court can then consider whether the appointment of a limited purpose representative pursuant to Federal Rule of Civil Procedure 25 and Federal Rule of Bankruptcy Procedure 7025, 9014 to address the legal incompetency to obtain refinancing should be appointed.

Rather than denying confirmation and throwing the case into a dollar and time wasting limbo, and to protect Oak Ventures during this period, the court continues the hearing, with Debtor having to continue to make the plan payments thereunder, and the Trustee making the disbursement to. and Oak Ventures (guaranteeing receipt of the adequate protection payment) while the Debtor, and then any limited purpose representative obtains the refinance to protect the $111,000+ equity in the property for the bankruptcy estate.

June 22, 2021 Hearing

As of the court's drafting of this pre-hearing disposition, no other documents or pleadings have been filed for this motion.

At the hearing xxxxxxxx

FINAL RULINGS

18. **16-20605-E-13** **JAMES HURLEY** **MOTION TO MODIFY PLAN**
DJC-5 **Diana Cavanaugh** **5-12-21 [91]**

Final Ruling: No appearance at the June 22, 2021 hearing is required.

The Motion to Modify Plan is dismissed without prejudice.

James Marven Hurley ("Debtor") having filed a Notice of Withdrawal, which the court construes to be an *Ex Parte* Motion to Dismiss the pending Motion on June 16, 2021, Dckt. 102; no prejudice to the responding party appearing by the dismissal of the Motion; the Debtor having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by David Cusick ("the Chapter 13 Trustee"); the *Ex Parte* Motion is granted, the Debtor's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Modify Plan filed by James Marven Hurley ("the Debtor") having been presented to the court, the Debtor having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 102, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Modify Plan is dismissed without prejudice.

19. 18-26407-E-13 RWH-4 — NICHOLE MORGAN — Ronald Holland — MOTION TO MODIFY PLAN — 5-13-21 [85]

Final Ruling: No appearance at the June 22, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on May 13, 2021. By the court's calculation, 40 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Nichole Cleveland Morgan ("Debtor"), has filed evidence in support of confirmation. No opposition to the Motion has been filed by creditors. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition indicating non-opposition on June 2, 2021. Dckt. 92. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Nichole Cleveland Morgan ("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 6, 2021, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

20.	**21-21153-E-11** **DPC-1** **20 thru 21**	**REHANA HARBORTH** **Marc Voisenat**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **5-20-21 [33]**

Final Ruling: No appearance at the June 22, 2021 hearing is required.

Local Rule 9014-1(f)(2) Objection—No Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on May 20, 2021. 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 Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection.

The Objection to Confirmation is overruled as moot.

The Chapter 13 Trustee, David Cusick (the "Trustee"), objects to confirmation of the debtor, Rehana Harborth's ("Debtor") Chapter 13 plan. Debtor may convert a Chapter 13 case to a Chapter 11 case after notice and hearing. 11 U.S.C. § 1307(d). Debtor filed a Motion to Convert from Chapter 13 to Chapter 11 on May 5, 2021. Dckt. 23. The Motion was granted on May 25, 2021. Dckt. 25. Debtor's case was converted to a proceeding under Chapter 11 once the order was entered on May 26, 2021. Dckt. 38.

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, David Cusick (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 the Objection is overruled as moot, the case having been converted to one under Chapter 11.

21.	**21-21153-E-11 KL-1**	**REHANA HARBORTH Marc Voisenat**	**OBJECTION TO CONFIRMATION OF PLAN BY WILMINGTON SAVINGS FUND SOCIETY, FSB 4-21-21 [17]**

Final Ruling: No appearance at the June 22, 2021 hearing is required.

Local Rule 9014-1(f)(2) Objection—No Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and the Chapter 13 Trustee on April 21, 2021. By the court's calculation, 62 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation is overruled as moot.

Wilmington Savings Fund Society ("Creditor") holding a secured claim objects to confirmation of the debtor, Rehana Harborth's ("Debtor") Chapter 13 plan. Debtor may convert a Chapter 13 case to a Chapter 11 case after notice and a hearing. 11 U.S.C. § 1307(d). Debtor filed a Motion to Convert from Chapter 13 to Chapter 11 on May 5, 2021. Dckt. 23. The Motion was granted on May 25, 2021. Dckt. 25. Debtor's case was converted to a proceeding under Chapter 11 once the order was entered on May 26, 2021. Dckt. 38.

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 Wilmington Savings Fund Society ("Creditor") holding a secured, 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, the case having been converted to one under Chapter 11.

22.	**18-23567-E-13** **PSB-5**	**TRAVIS/LUCELYN STEVENSON** **Paul Bains**	**MOTION FOR COMPENSATION FOR PAULDEEP BAINS, DEBTORS ATTORNEY(S)** **5-19-21 [93]**

Final Ruling: No appearance at the June 22, 2021 hearing is required.

Local Rule 9014-1(f)(2) Motion—No Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 19, 2021. By the court's calculation, 34 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00).

The Motion for Allowance of Professional Fees was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The court has determined that oral argument will not be of assistance in rendering a decision in this matter.

The Motion for Allowance of Professional Fees is granted.

Pauldeep Bains, the Attorney ("Applicant") for Travis Jake Stevenson and Lucelyn Ann Stevenson, 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 February 9, 2021, through June 22, 2021. Applicant requests fees in the amount of $2,707.50 and costs in the amount of $0.00.

Trustee does not oppose the fees requested. Dckt. 98.

APPLICABLE LAW

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

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

Further, the court shall not allow compensation for,

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

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

Reasonable Fees

A bankruptcy court determines whether requested fees are reasonable by examining the

circumstances of the attorney's services, the manner in which services were performed, and the results of the services, by asking:

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Reasonable Billing Judgment

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

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

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

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

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

A review of the application shows that Applicant's for the Estate include preparing a Motion to Employ Broker and a Motion to Sell, and preparing the instant application for fees. The court finds the services were beneficial to Client and the Estate and were reasonable.

"No-Look" Fees

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

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

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed $4,000.00 in attorneys' fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 31. 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 Employ Broker: Applicant spent 1.5 hours in this category. Applicant drafting the motion, filed and served the motion, and attended the hearing.

Motion to Sell: Applicant spent 4.1 hours in this category. Applicant drafted the motion, filed and served the motion, and attended the hearing.

Motion for Compensation: Applicant spent 4.0 hours in this category. Applicant prepared the instant application for additional fees and attended the hearing.

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Pauldeep Bains (Attorney)	8.1	$300.00	$2,430.00
Tina Perez (Paralegal)	1.5	$185.00	$277.50
Total Fees for Period of Application			$2,707.50

Costs and Expenses

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

FEES AND COSTS & EXPENSES ALLOWED

Fees

The unique facts surrounding the case, including preparing a Motion to Employ Broker and a Motion to Sell, raise substantial and unanticipated work for the benefit of the Estate, Debtor, and parties in interest. The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. The request for additional fees in the amount of $2,707.50 is approved pursuant to 11 U.S.C. § 330 and authorized to be paid by David Cusick ("the Chapter 13 Trustee") from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

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

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

Fees	$2,707.50
Costs and Expenses	$0.00

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Pauldeep Bains ("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 Pauldeep Bains is allowed the following fees and

expenses as a professional of the Estate:

Pauldeep Bains, Professional Employed by Travis Jake Stevenson and Lucelyn Ann Stevenson ("Debtor")

Fees in the amount of $2,707.50
Expenses in the amount of $0.00,

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

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

23. **19-24178-E-13** **JOSE HERNANDEZ** **MOTION TO MODIFY PLAN**
PGM-4 **Peter Macaluso** **5-12-21 [100]**

Final Ruling: No appearance at the June 22, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 12, 2021. By the court's calculation, 41 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Jose Luis Hernandez ("Debtor"), has filed evidence in support of confirmation. No opposition to the Motion has been filed by creditors. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on June 2, 2021. Dckt. 107. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Jose Luis Hernandez ("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 12, 2021, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

24. **21-21282-E-13 DPC-1** **CYNTHIA/JOHN PERKINS** **Michael Hays** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **5-18-21 [24]**

WITHDRAWN BY M.P.

Final Ruling: No appearance at the June 22, 2021 hearing is required.

The Chapter 13 Trustee, David Cusick (the "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 April 8, 2021, is confirmed.**

Counsel for the debtor, Cynthia Denise Perkins and John Wendel Perkins ("Debtor") shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Trustee for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

25. **19-25889-E-13 PGM-4** **KEVIN/KRISTY MACY** **Peter Macaluso** **MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTORS ATTORNEY(S)** **5-19-21 [100]**

Final Ruling: No appearance at the June 22, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 19, 2021. By the court's calculation, 34 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The court *sua sponte* shortens the notice period to the 34 days provided based on the facts and circumstances of this Motion. Additionally, delaying adjudication of this Motion or requiring a hearing at which the court would shorten time would be inconsistent with the diligent, efficient, cost effective prosecution of the case through these additional services by Debtor's counsel. This short service time is an aberration and clearly a clerical error.

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.

Peter G. Macaluso, the Attorney ("Applicant") for Kevin Jeffrey Macy and Kristy Ann Macy, 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 February 2, 2021, through April 12, 2021. Applicant requests fees in the reduced amount of $1,500.00 and costs in the amount of $0.00.

Trustee does not oppose the reduced fees requested. Dckt. 105.

APPLICABLE LAW

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

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

Further, the court shall not allow compensation for,

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

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

Reasonable Fees

> A bankruptcy court determines whether requested fees are reasonable by examining the

circumstances of the attorney's services, the manner in which services were performed, and the results of the services, by asking:

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Reasonable Billing Judgment

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

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

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

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

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

A review of the application shows that Applicant's for the Estate include preparing a Motion to Modify; reviewing and responding to Trustee's Motion o Dismiss; and appearing at the corresponding hearings. The court finds the services were beneficial to Client and the Estate and were reasonable.

"No-Look" Fees

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

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

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed $4,000.00 in attorneys' fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 63. 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 3.5 hours in this category. Applicant prepared and filed Motion to Modify Plan, Amended Schedules, and Declaration; reviewed and prepared response to Trustee's Opposition to proposed plan; and appeared at the hearings .

Motion to Dismiss: Applicant spent 2.25 hours in this category. Applicant met with clients; prepared Opposition to Trustee's Motion to Dismiss; and appeared at the hearings.

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 Macaluso (Attorney)	5.35	$300.00	$1,605.00
	0.40	$75.00	$30.00
Total Fees for Period of Application			$1,635.00

Costs and Expenses

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

FEES AND COSTS & EXPENSES ALLOWED

Fees

The unique facts surrounding the case, including preparing a Motion to Modify; reviewing and responding to Trustee's Motion o Dismiss; and appearing at the corresponding hearings, 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 reduced additional fees in the amount of $1,500.00 is approved pursuant to 11 U.S.C. § 330 and authorized to be paid by David Cusick ("the Chapter 13 Trustee") from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

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

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

Fees	$1,500.00
Costs and Expenses	$0.00

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Peter G. Macaluso ("Applicant"), Attorney having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Peter G. Macaluso, Professional Employed by Kevin Jeffrey Macy and Kristy Ann Macy ("Debtor")

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

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

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