UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

June 28, 2022 at 2:00 p.m.

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1. **19-23658-E-13** **MARC DIAB** **MOTION TO MODIFY PLAN**
GC-1 **Julius Cherry** **5-3-22 [22]**

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

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 3, 2022. By the court's calculation, 56 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The debtor, Marc Anthony Diab ("Debtor") seeks confirmation of the Modified Plan because they lost their job and are now only working part-time, and because Debtor didn't initially fully realize the impact that the loss of income from Debtor's wife, who died shortly before Debtor filed this case,

would have on his financial situation. Declaration, Dckt. 26. The Modified Plan provides for $1,600.00 monthly payments for the remaining life of the Plan, and a zero percent (0%) dividend to general unsecured claims totaling $0.00. Modified Plan, Dckt. 24. 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 14, 2022. Dckt. 28. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor is delinquent in Plan payments.

B. Debtor has ongoing mortgage payment issues.

DEBTOR'S REPLY

Debtor filed a reply on June 21, 2022 requesting the matter be continued to July 26, 2022 at 2:00 pm in order for Debtor to become current on their First Amended Chapter 13 Plan. Dckt. 31.

Although this would resolve the delinquency issue, there are still outstanding issues as discussed below.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is $3,150.00 delinquent in plan payments under the modified plan, which represents multiple months of the plan payment, which proposes payments of $2,100.00 through February 2022, then $1,600.00 for each remaining month of the plan. Before the hearing, another plan payment will be due. 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).

Ongoing Mortgage Payment Issues

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)).

Debtor must continue with the ongoing payment of $1,314.16, not $1,315.00. Debtor's Plan should be amended to reflect the proper ongoing payment.

The Trustee also notes that the Plan, as currently funded, will be insufficient for the ongoing mortgage for the 36th and 37th month. The Trustee states in the Opposition:

> Trustee has $2,807.98 balance on hand and shows the ongoing mortgage is due two payments before the payment is due in June 2022, (the 36th month), and July 2022, (the 37th month.) The balance on hand will pay the past due payments, but if only one more plan payment is paid of $1,600.00, the Trustee will need and additional sum of approximately $1,150 to pay the remaining ongoing mortgage payments.

Dckt. 28 at 2:17-23. At the hearing, XXXXXXXXXX

~~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, Marc Anthony Diab ("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 xxxxxxxx

2.	**22-20913-E-13 DPC-1**	**ZACHARIAH DORSETT George Burke**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 5-25-22 [22]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and, Debtor's Attorney on May 25, 2022. 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"), opposes confirmation of the Plan on the basis that:

A. Section 341 Meeting of Creditors Not Yet Concluded

B. Not All Tax Returns Have Been Filed

C. Zachariah Tesfaye Dorsett ("Debtor") Failed to Provide Business Documents

D. Debtor Has Not Disclosed All Assets

E. Debtor Has Provided Inaccurate Or Incomplete Information

DISCUSSION

Trustee's objections are well-taken.

Failure to Conclude 341 Meeting

Debtor did not conclude the Meeting of Creditors held pursuant to 11 U.S.C. § 341. The Trustee has continued the Meeting of Creditors to June 16, 2022 which is mandatory. *See* 11 U.S.C. § 343. Without the conclusion of the Meeting the court and Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325.

Failure to File Tax Returns

Debtor admitted at the Meeting of Creditors that they have not filed federal income tax returns for all four years prior to the filing of their petition. Debtor has, however, at least filed their 2021 tax return. Filing of the return is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Failure to File Documents Related to Business

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

A. Two years of tax returns,
B. Six months of profit and loss statements,
C. Six months of bank account statements, and
D. Proof of license and insurance or written statement that no such documentation exists.
E. Specific document requests relating to compliance with federal law limits on HEMP products and THC extraction

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

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 Debtor has failed to file an amendment disclosing the book inventory and potential intellectual property rights of a published book written by the Debtor. Furthermore, Debtor has failed to provide accurate information in regards to the starting and ending dates for the businesses listed in their Statement of Financial Affairs. Lastly, Debtor has completely failed to disclose Honey Lake Motocross, LLC, a business which Debtor has testified they have a 100% interest in. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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

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

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

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

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

3.	**22-21222-E-13** **RHS-1**	**PEGGY SOMKOPULOS** **Peter Nisson**	**ORDER TO SHOW CAUSE** **6-10-22 [21]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, U.S. Trustee, and Chapter 13 Trustee as stated on the Certificate of Service on June 11 and 12, 2022. The court computes that 16 and 17 days' notice has been provided.

The court issued an Order to Show Cause based on why the court should not remove Debtor's attorney of record.

The Order to Show Cause is xxxxxxxxxx

The above bankruptcy case was filed on May 13, 2022. On the Petition Peter Nisson is identified as the attorney for Debtor filing the Petition. Dckt. 1 at 8. After review of the pleadings filed, the Clerk's office discovered that the Debtor's attorney, Mr. Peter L. Nisson, has not been eligible to practice law in California since January 28, 2022. The Clerk's office attempted to reach Mr. Nisson at the number listed but was not able to get through to his office nor leave a voicemail message. The Debtor was then contacted regarding her attorney.

On June 1, 2022, the Debtor filed a letter stating that the organization helping her complete the necessary paperwork to file bankruptcy, the Consumer Advocate Service, had Mr. Nisson's information on the documents. Dckt. 20. Further, that she was following their instructions and it was an error that Mr. Nisson was listed as her attorney.

After further review of the files in this case, it appears that the inclusion of Peter Nisson's name was placed on the Petition due to a clerical error. The Debtor having confirmed this clerical error, The State Bar of California attorney webpage confirms that Peter Nisson is not eligible to practice law

now or in the future.

June 28, 2022 Hearing

At the hearing, XXXXXXXXXX

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 Order to Show Cause 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 Order to Show Cause is xxxxxxxxxxx

4. **17-22223-E-13 DBJ-1** **DALE PROSISE** **Douglas Jacobs** **MOTION TO SUBSTITUTE PARTY, AS TO DEBTOR** **6-2-22 [45]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 2, 2022. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

The Motion to Substitute 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 Substitute is granted.

Wayne Bickell, Step-Father of deceased Debtor Dale Robert Prosise's ("deceased Debtor") children, seeks an order approving the motion to substitute as Debtor for the deceased Debtor. This motion is being filed pursuant to Federal Rule of Bankruptcy Procedure 1016.

Deceased Debtor filed for relief under Chapter 13 on April 3, 2017. On June 20, 2017, deceased Debtor's Chapter 13 Plan was confirmed. Dckt. 14. On May 16, 2022, deceased Debtor passed away.

Mr. Bickell asserts that he is the lawful successor and representative of Debtor.

Pursuant to Federal Rule of Bankruptcy Procedure 1004.1, Mr. Bickell requests authorization to be substituted in for the deceased Debtor and to perform the obligations and duties of the deceased party in addition to performing his own obligations and duties.

Mr. Bickell gave notice of deceased Debtor's death in this Motion. Dckt. 45. Federal Rule of Bankruptcy Procedure 7025(a)(1) as incorporated in Federal Rule of Civil Procedure 25 states:

> *Substitution if the Claim Is Not Extinguished.* If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.

Upon the plain reading of Rule 25, there is no requirement that a notice of death must be given before a Motion can be filed. The relationship between the Notice of Death and Motion is further explained below.

Pursuant to Local Bankruptcy Rule 1016-1(a), a notice of death "shall be filed within sixty (60) days of the death of debtor" by debtor's counsel or intended representative or successor. Additionally, a copy of the death certificate shall be filed as an exhibit to the Notice of Death. Local Bankruptcy Rule 1016-1(a).

Here, Mr. Bickell filed a certificate of death as Exhibit A in support of this Motion. Exhibit A, Dckt. 47. The Certificate indicates deceased Debtor passed away on May 16, 2022. *Id.* Therefore, the requirements of Local Bankruptcy Rule 1016-1(a) have been satisfied.

DISCUSSION

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

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

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

> Subdivision (a) of Rule 25 of the Federal Rules of Civil Procedure deals with the situation of death of one of the parties. If a party dies and the claim is not extinguished, then the court may order substitution. **A motion for substitution may be made by a party to the action or by the successors or representatives of the deceased party.** There is no time limitation for making the motion for substitution originally. Such time limitation is keyed into the period following the

> time when the fact of death is suggested on the record. In other words, procedurally, **a statement of the fact of death is to be served on the parties in accordance with Bankruptcy Rule 7004 and upon nonparties as provided in Bankruptcy Rule 7005** and suggested on the record. The suggestion of death may be filed only by a party or the representative of such a party. The suggestion of death should substantially conform to Form 30, contained in the Appendix of Forms to the Federal Rules of Civil Procedure.
>
> The motion for substitution must be made not later than 90 days following the service of the suggestion of death. Until the suggestion is served and filed, the 90 day period does not begin to run. In the absence of making the motion for substitution within that 90 day period, paragraph (1) of subdivision (a) requires the action to be dismissed as to the deceased party. However, the 90 day period is subject to enlargement by the court pursuant to the provisions of Bankruptcy Rule 9006(b). Bankruptcy Rule 9006(b) does not incorporate by reference Civil Rule 6(b) but rather speaks in terms of the bankruptcy rules and the bankruptcy case context. Since Rule 7025 is not one of the rules which is excepted from the provisions of Rule 9006(b), the court has discretion to enlarge the time which is set forth in Rule 25(a)(1) and which is incorporated in adversary proceedings by Bankruptcy Rule 7025. Under the terms of Rule 9006(b), a motion made after the 90 day period must be denied unless the movant can show that the failure to move within that time was the result of excusable neglect. The suggestion of the fact of death, while it begins the 90 day period running, is not a prerequisite to the filing of a motion for substitution. The motion for substitution can be made by a party or by a successor at any time before the statement of fact of death is suggested on the record. **However, the court may not act upon the motion until a suggestion of death is actually served and filed.**
>
> The **motion for substitution together with notice of the hearing is to be served on the parties in accordance with Bankruptcy Rule 7005 and upon persons not parties in accordance with Bankruptcy Rule 7004 . . . .**

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

Here, Wayne Bickell has provided sufficient evidence to show that administration of the Chapter 13 case is possible and in the best interest of creditors after the passing of the debtor. Additionally, the request and supporting documents appear to comply with the Federal Rules of Civil Procedure, Federal Rules of Bankruptcy Procedure, and Local Bankruptcy Rules.

Based on the evidence provided, the court determines that further administration of this Chapter 13 case is in the best interests of all parties, and that Mr. Bickell, as the step-father of the deceased party's sons and as the successor and lawful representative, may continue to administer the case on behalf of the deceased Debtor, Dale Robert Prosise. The court grants the Motion to Substitute

Party.

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

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

5. 21-22223-E-13 MS-1 STEVEN WOLF Mark Shmorgon MOTION TO MODIFY PLAN 5-20-22 [31]

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 20, 2022. By the court's calculation, 39 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, Steven Wolf ("Debtor") seeks confirmation of the Modified Plan because Debtor suffered a three month job loss resulting in post-petition delinquency. Declaration, Dckt. 34. The Modified Plan provides payments of $2,552.00 per month for months 12 through 60 (48 months total), and a 100 percent dividend to unsecured claims totaling $10,547.37. Modified Plan, Dckt. 33. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on June 14, 2022. Dckt. 39. Trustee opposes confirmation of the Plan on the basis that:

A. Insufficient Plan Payments

B. Failure to Complete the Plan Within Allotted Time

DISCUSSION

Insufficient Plan Payments

Creditor alleges that the Plan is not feasible. 11 U.S.C. § 1325(a)(6). The monthly proposed payments of $2,552.00 are insufficient to pay the aggregate of the trustee's fees, the monthly payment for administrative expenses, monthly post-petition contract installments due on Class 1 claims, and monthly dividends payable on account of Class 1 arrearage claims and executory contract and unexpired lease arrearage claims. Trustee has calculated that a monthly payment of $2,625.00 is sufficient to complete the plan within 60 months. Debtor's amended plan falls $73.00 per month short. Thus, the Plan may not be confirmed.

Failure to Complete Plan Within Allotted Time

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in 63 months due to insufficient monthly payment amounts. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

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, Steven Wolf ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion to Confirm the Modified Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

6. 19-25825-E-13 CK-5 JUSTIN/ELISABETH ERICKSON Catherine King MOTION TO MODIFY PLAN 5-24-22 [70]

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 24, 2022. 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, Justin Leif Erickson and Elisabeth Grace Erickson ("Debtor") seek confirmation of the Modified Plan because Debtor believed they had brought the payment plan current but found they had made some mistakes. Declaration, Dckt. 73. The Modified Plan provides payments of $1,675.00 for 29 months, $1,750.00 for 31 months, and a 2 percent dividend to unsecured claims totaling $119,222.79. Modified Plan, Dckt. 72. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S

The Chapter 13 Trustee, David Cusick ("Trustee") filed an Opposition on June 14, 2022. Dckt. 77. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor is Delinquent in Plan Payments

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is $1,100.00 delinquent in plan payments, which represents less than one month of the $1,675.00 plan payment. Before the hearing, another plan payment will be due. According to the Chapter 13 Trustee, the Plan in § 2.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

The 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 Leif Erickson and Elisabeth Grace Erickson ("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.

7. **22-20228-E-13** **JUAN GRANADOZ** **MOTION TO CONFIRM PLAN**
LDD-1 **Linda Deos** **5-6-22 [24]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 6, 2022. 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 denied.

The debtor, Juan Manuel Granadoz ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for $1,465.00 per month for three (3) months, followed by $2,198.00 per month for fifty-seven (57) months. Amended Plan, Dckt. 27. 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 13, 2022. Dckt. 32. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor is delinquent on Plan payments.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is $1,468.00 delinquent in plan payments, which

represents one month of the $1,465.00 plan payment due April 25, 2022, plus $3.00 of the $2,198.00 Plan payment due May 25, 2022. Before the hearing, another plan payment of $2,198.00 will be due. According to the Chapter 13 Trustee, the Plan in § 2.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

The 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, Juan Manuel Granadoz ("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.

8. **22-20933-E-13 DPC-1** **MARY CARBONE** **Chad Johnson** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **5-25-22 [25]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on May 25, 2022. 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"), opposes confirmation of the Plan on the basis that:

A. Debtor may be unable to make Plan payments due to a failure to provide for a priority claim.

B. Debtor inaccurately recorded the dates at which they resided at their previous address.

DISCUSSION

Trustee's objections are well-taken

Failure to Provide for a Priority Claim

At the time of filing this objection, neither the Internal Revenue Service nor Franchise Tax Board filed Proof of Claims. Additionally, Debtor's Plan estimates priority claims of $0.00. Dckt. 3. However, at the First Meeting of Creditors, Debtor admitting they need to file a new plan to account for 2020 taxes owed.

The Internal Revenue Service filed a Proof of Claim on June 16, 2022, for $7,903.00 in priority unsecured debt and $1,522.00 in general unsecured debt. Proof of Claim 9-1.

The Franchise Tax Board has not yet filed any Proof of Claim. The deadline for governmental agencies to file a Proof of Claim in this case is October 11, 2022.

Debtor should amend Schedules E/F to include any debts owed to both the Internal Revenue Service and Franchise Tax Board.

The Plan does not provide for all priority debt as required by 11 U.S.C. § 1322(a)(2).

Inaccurate Date for Previous Address

Trustee asserts that at the First Meeting of Creditors, held on May 19, 2022, Debtor admitted that they resided at the property known commonly as 5319 Diane Way, Santa Rosa, CA 95409 from December 2019 to April 2021. Debtor's Statement of Financial Affairs currently incorrectly claims that Debtor resided at that address until April 2022. Dckt. 1 at 32. Debtor should amend their Statement of Financial Affairs to include the correct dates.

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

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

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

9. **21-23539-E-13** **DEREK WOLF** **CONTINUED MOTION FOR RELIEF**
DVW-1 **Peter Macaluso** **FROM AUTOMATIC STAY**
10-19-21 [11]

U.S. BANK, NATIONAL ASSOCIATION VS.

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.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on October 19, 2021. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. The court continued the hearing, opposition and rely briefs were filed, and the final hearing set for December 14, 2021.

The Motion for Relief is xxxxxxxxxx

U.S. Bank, N.A. as Legal Title Trustee for Truman 2016 SC6 Title Trust ("Movant" or "Creditor") seeks relief from the automatic stay with respect to Derek Wolf's ("Debtor") real property commonly known as 7995 Alta Vista Lane, Citrus Heights, California ("Property"). Movant has provided the Declaration of Brian Gaske to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues on October 12, 2021, without any notice of filing of Debtor's fourth consecutive bankruptcy case, Movant conducted it's foreclosure sale on the property. Motion, Dckt. 11. At the time of the foreclosure sale, Debtor was due 25 months worth of mortgage payments, with a total of ($25,150.25) in payments past due. Declaration, Dckt. 19. Movant specifies that due to the three prior consecutive bankruptcies prior to this one—all of which were dismissed—the nature of these payments as post or pre petition is not clear.

Movant requests several types of relief in this case. First, the annulment of the stay to make the foreclosure sale valid. Second, to terminate the stay going forward. Third, that the court order

pursuant to 11 U.S.C. § 362(d)(4) that the automatic stay in a future filed case in the next two years will not automatically go into effect.

As the Civil Minutes for this Motion document, this matter has been a long and winding trail of issues, points, and ongoing disagreement. During this process Debtor has obtained counsel, a Plan confirmed, a Plan defaulted, and a related dispute now to be adjudicated in an Objection to Claim over the amount of the debt and application of payments.

Credit for the length of these proceedings does not go solely to the Parties, but the court has contributed significantly. Part of this has focused on insuring that Debtor, first attempting to prosecute this case in pro se and now with counsel, was afforded not only the opportunity to present and have his rights with respect to this Motion properly adjudicated, but that he also understood the process and that he has been afforded such opportunity, what the outcome from this litigation.

As this Contested Matter developed, it appeared to the court that a core dispute Debtor has asserted over the amount of the claim and proper application of payments should be "easily determined" through a "simple spreadsheet" computing the claim and payments made since the 2015 loan modification.

Trustee's Non-Opposition

Trustee initially filed a non-opposition to this motion on October 26, 2021 (Dckt. 21). Trustee non-opposition was based on Debtor, in *pro se*, not getting documents filed.

Summary Relief From Stay Proceeding

As stated by the Bankruptcy Appellate Panel, relief from stay proceedings are summary proceedings that address issues arising only under 11 U.S.C. Section 362(d). *Hamilton v. Hernandez (In re Hamilton)*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427, at *8–9 (B.A.P. 9th Cir. Aug. 1, 2005) (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985)). The court does not determine underlying issues of ownership, contractual rights of parties, or issue declaratory relief as part of a motion for relief from the automatic stay in a Contested Matter (Federal Rule of Bankruptcy Procedure 9014). This was restated recently by the Bankruptcy Appellate Panel in *Harms v. Bank of N.Y. Mellon (In re Harms)*, 603 B.R. 19, 27 (B.A.P. 9th Cir. 2019), including:

> Relief from stay proceedings are primarily procedural. *Veal v. Am. Home Mortgage Serv., Inc. (In re Veal)*, 450 B.R. 897, 914 (9th Cir. BAP 2011). They typically determine whether the equities justify releasing the moving creditor from the legal effect of the automatic stay. *Id.* Because of the limited scope of inquiry, neither the movant's claim nor its security should be litigated in the relief from stay proceeding. *Id.* (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740-41 (9th Cir. 1985)); *see also Grella v. Salem Five Cent Sav. Bank*, 42 F.3d 26, 33 (1st Cir. 1994) ("We find that a hearing on a motion for relief from stay is merely a summary proceeding of limited effect. . . ."). "Given the limited nature of the relief, . . . the expedited hearing schedule § 362(e) provides, and because final adjudication of the parties' rights and liabilities is yet to occur, . . . a party seeking stay relief need only establish that it has a colorable claim . . . ." *In re Veal*, 450 B.R. at 914-15 (emphasis added) (citing *United States v. Gould (In re Gould)*, 401

B.R. 415, 425 n.14 (9th Cir. BAP 2009)).

Though the court has discussed, and prodded the parties to address, some substantive matters such as proper computation of the secured claim and document the computation of the claim through a "simple spreadsheet," those issues are not adjudicated in this Motion for Relief From the Stay.

REVIEW OF FILE

Debtor commenced this case on October 12, 2021. On October 27, 2021, a chapter 13 Plan was filed by Debtor in *pro se*. Dckt. 24. The Plan provides for monthly payments by Debtor of $1,500 for sixty (60) months. Plan, Nonstandard Provisions; Dckt. 24 at 7. Additionally, Debtor will pay the Plan off early "if awarded settlement from Social Security." *Id*.

The only claim provided for in the Debtor's *pro se* Plan was Movant's, for which Debtor is to pay $500 a month toward the $29,254.55 arrearage and $1,016.32 for the post-petition monthly payment. These two payment total $1,516.32, which is slightly more than the $1,500 a month play payment.

As addressed in the prior Civil Minutes, there appeared to be some significant financial feasibility issues with such Plan. The court noted that on Schedule J filed by Debtor in pro se, it included the statement, "If Rushmore will finally be fair and recognize my Mod Package that they have on file." In retrospect, this appears to be a reference to the 2015 Loan Modification.

REQUESTED ANNULMENT OF STAY

At the first hearing on this Motion Movant notified the court that the buyer at the foreclosure sale has terminated the contract in light of the circumstances, and Movant was no longer seeking to annul the stay.

JANUARY 25, 2022 HEARING

Debtor's newly obtained counsel appeared at the January 25, 2022 hearing on this Motion. He reported the efforts being made in the prosecution of this case and now a Chapter 13 Plan set for hearing in March 2022. Counsel also discussed his work with the Debtor to insure that Debtor understood that this case, in light of the many prior cases filed by Debtor in *pro se* that have been dismissed, is his final "fish or cut bait moment."

Debtor's counsel also noted that if the Debtor were to sell the residence now, he would have to repay the grant received, it not being forgiven for nine more years. The court projects that the recoverable equity for Debtor would be lower than previously appearing, but could still be $25,000+ cash.

From a review of the Supplemental Schedules I and J (Schedule I being incomplete and not including the gross income from Debtor's business and rental property), it appears that performing a plan for five years may be problematic.

However, the court notes that Debtor's counsel (Debtor previously having commenced this case in *pro se*) substituted in only two weeks prior to the hearing, this may well be part of the "more work to be done" by Counsel working with Debtor.

The Trustee confirmed that he now has the correct address for Movant and the payment of the amounts in the proposed plan, including past payments, will be made from the funds available to the Trustee.

The court continues this hearing to afford Debtor and his new counsel to "fish" (whether through curing the arrearage through the Plan or selling the Residence and obtaining $25,000+ of exempt proceeds), rather than merely "cutting bait" and losing the house (and any exempt value) through a foreclosure.

MARCH 25, 2022 Hearing

At the hearing on the Motion to Confirm, the Trustee reported that Debtor had not provided all of the information. After an extensive discussion in connection with the Motion to Confirm, the court concluded that for this case Debtor was at the "put up or shut up phase." He has promised to make certain payments, he is curing the default (a cashier's check in Debtor's counsel's hand) and has provided to make the payments electronically. Debtor should be allowed to show he can perform the plan in this case and not have it dismissed out from under him. The court granted the Motion to Confirm the Chapter 13 Plan, as it was amended at that hearing.

However, it also appears, as requested by counsel and the creditor seeking relief from the stay, that Debtor's performance bears close watching. Additionally, Debtor may benefit from knowing that there is a motion to dismiss and a motion for relief from stay pending, which he is fending off by performing the Plan.

SUPPLEMENTAL PLEADINGS FILED AND EVOLUTION OF ISSUES

The Parties have filed various pleadings and supplemental pleadings as the court brought them through the trail of this Contested Matter. The court summaries them as follows.

Debtor's Opposition

On November 19, 2021, Debtor, in *pro se*, filed an opposition to the Motion for Relief. Debtor states they need more time to reconcile their mortgage with U.S. Bank. Additionally, Debtor states they are missing accounting for $91,600.00 that Keep Your Homes California granted him in 2018. Debtor also disputes penalties and fees of Rushmore and provides exhibits.

Movant's Response

Movant filed a reply in response to Debtor's opposition to the Motion for Relief from Automatic Stay on December 2, 2021. Dckt. 33. Movant states the Debtor has had the opportunity in his three prior bankruptcy filings to object to Movant's Proof of Claim or reconcile his mortgage, but has not done so.

`Also, Debtor asserts that payments were made to Movant in his prior case. In Debtor's Case No. 20-22852, no pre-petition arrears were paid to Movant. Movant also believes the Mortgage Assistance loan received which was sufficient to bring the Debtor's loan current as of February/March 2018, "was in the sum of only $61,131.14, and NOT the entire $91,700 as alleged by the Debtor, and

that the Debtor's account was credited for that amount on or around March 20, 2018 by U.S. Bank, the then servicer of Debtor's loan. Movant has to date been unable to locate any evidence that the sum of $91,700 was received from the Mortgage Assistance loan/program."

Movant concludes that Debtor has set forth no substantive Opposition to Movant's request to terminate and/or annul the stay and as such the Motion should be granted as requested. Movant requests (I) *in rem* relief from the automatic stay, as set forth in its Motion, to proceed to conduct another sale of the Property and (ii) a finding that Movant's previously conducted sale of the Property did not violate the automatic stay.

The Court has now continued this hearing several times. As event have transpired, Debtor has confirmed a plan, and then defaulted on the plan.

Trustee's Status Report

On December 29, 2021, Trustee David P. Cusick filed a status report stating Debtor is delinquent $1,500.00 in Plan payments and Debtor has failed to provide verification of income, 2 years of tax returns, 6 months of profit and loss statements and 6 months of bank statements.

Movant's Supplemental Pleadings
for January 11, 2022 Hearing

For the January 11, 2022 hearing, Movant filed Supplemental Pleadings. Dckts. 43, 44. In the Supplemental Declaration, the testimony includes (identified by paragraph number in the Declaration):

> 5. Debtor states that he received a $91,600.00 loan in approximately February 2018 from the California Help to Homeowner's Program.
>
> 6. A prior loan servicer was responsible for the loan that is the subject of this Motion at that time.
>
> 8., 9. Rushmore, the current loan servicer, has provided Debtor and the proposed counsel for Debtor with documents and records (including those from the period when the prior loan servicer was responsible for this loan), which include:
>
> > a. The sum of $61,131.14 was received and applied to Debtor's loan in 2018.
> >
> > b. Upon further review of the prior loan servicer's files, additional information has been provided Debtor and Debtor's proposed counsel showing that the $91,700 was received in 2018 and applied to Debtor's loan. Exhibit A, Dckt. 44, is a printout of the loan history from the prior loan servicer's records (which unfortunately is not clearly set out in a set of tables, but consists of a lot of words and number squeezed on each page - with the court clearing noting that this is not the records of the current loan servicer, but what they received from the prior loan servicer.
>
> 9a. In the Declaration the obligation under the loan and application of the $91,700 is stated as follows:

Principal Balance 1st Lien	($170,465.08)		($36,400.00)	Deferred Principal 2nd Lien
Application of March 20, 2018 $97,700				
Due Date June 2015		$7,292.61		
Due Date March 2016		$1,620.58		
Due Date May 2016		$1,639.91		
Due Date July 2016		$4,904.70		
Due Date January 2017		$4,904.70		
Due Date July 2017		$4,465.50		
Due Date December 2017		$4,465.50		
Due Date May 2018		$256.35		
Due Date May 2018		$1,019.00		
Due Date May 2018		$61,131.14		
Total Monies Applied		$91,699.99		

11. The $91,700 was applied to the delinquent mortgage payments due for the months of June 1, 2015 through and including May 1, 2018.

In the Motion for Relief, Movant asserts that the arrearage at the time of the foreclosure sale was not less than $25,150.24, which Movant states is for the period October 1, 2019 through October 1, 2021. Motion, ¶ 7; Dckt. 11.

Supplemental Pleadings for
May 10, 2022 Hearing

On May 6, 2022, counsel for the Chapter 13 Trustee provided a Supplemental Declaration providing testimony concerning Debtor's performance under the confirmed Chapter 13 Plan. Dckt. 13. That testimony, identified by paragraph number in the Supplemental Declaration includes:

> 3. and 4. The Trustee received initial payments totaling $1,500 and then payments in March and April 2022 totaling $2,810.00, with a payment scheduled through TFS in the amount of $1,100.00 which is anticipated to be received by May 11, 2022.
>
> 5. The Trustee computes Debtor to be delinquent $3,069.00 in plan payments, with an additional payment of $1,960.00 coming due on May 25, 2022.

The Trustee's counsel also notes that there is an Objection to Creditor's Claim pending, with

a hearing set for June 28, 2022.

Supplemental Pleadings for
June 1, 2022 Hearing

On May 25, 2022, Movant filed the Declaration of Brian Gaske, an Assistant Vice President for Rushmore Loan Management Services, LLC, the loan servicer. Dckt. 107. With respect to the receipt and applicant of the Save Your Home California monies, he states (identified by paragraph number of the Declaration, with the court paraphrasing unless test is shown with "quotation marks"):

> 8. $91,700.00 was received and applied to Debtor's loan in 2018, as identified on Exhibit 1 filed with the Declaration. Also, that Exhibit 1 states the application of payments received by Debtor after May 2018 until the filing of the current Bankruptcy Case.
>
> 9. The $91,700.00 was received on March 20, 2018 and first applied to the payments due June 1, 2015 through April 1, 2018, a period of 35 months in an amount totaling $29,283.04.
>
> 10. After the $29,283.04 was applied as above, Debtor and the prior loan servicer subsequently (to April 1, 2018) agreed that the principal balance of the loan would be "recast."
>
> 10 (cont.). The "recasting" of the loan was to apply the remaining $61,481.20 of the Save Your Home California monies to first reduce the principal, which when combined with the payments for June 1, 2015 through April 1, 2018, by $90,764.24, and then "935.76 for "corporate advances."
>
> 11. After application of the Save Your Home California monies in March of 2018, the principal balance of the loan was reduced from ($170,465.08(to ($161,874.80). The court is directed to review Exhibit 1 to see how the application of the $91,700.00 in March 2018 resulted in a principal reduction of $8,590.28.

The Declaration directs the court to Exhibit 3 (Dckt. 106) for the Principal Reduction and Recast Agreement (HFA Modification Assistance). With respect a principal reduction and recasting, it's provisions include (identified by paragraph number of this Agreement:

> (2.) Debtor deposits $61,141.14 with Creditor, which is to be applied to the "president balance due on principal."
>
> (2. cont.) This payment of $61,141.14 is to be made as of the effective date of this Agreement.
>
> (3.) Debtor agrees that the terms of the mortgage are modified as follows:
>
> - ($100,743.66) is to be paid, with interest, (the Interest Bearing Principal Balance) in monthly installments of $325.29.

- ♦ The first $325.29 payment is due May 1, 2018.

- ♦ The final payment will be due August 1, 2054.

Exhibit 1 (Dckt. 106) is a spreadsheet beginning with a March 2018 payment of $91,700, and showing the application of the payment first to the monthly amounts June 1, 2015, with a starting principal balance of $170,226.53 through April 1, 2018 with a principal balance of ($161,874.80) (the monthly principal, interest, and escrow portion of each monthly payment shown).

Modification of Loan

Before looking the numbers on Exhibit 1, the court goes back to the 2014 Loan Modification to which the subsequent 2018 recast and Save Your Home California monies relate.

In POC 2-1 filed by Creditor Debtor's 2015 Chapter 13 Case, 15-20683, there is attached a Document titled Home Affordable Modification Agreement ("Modification Agreement"). The provisions of the Loan Modification Agreement are summarized as follows:

A. Dated August 4, 2014.

B. The Modification Terms are stated in ¶ 3 of the Modification Agreement, and include (identified by the paragraph number in the Modification Agreement):

1. The Loan is modified effective September 1, 2014. ¶ 3.

2. The first payment due under the loan modification is due September 1, 2014. *Id*.

a. The maturity date is August 1, 2054. ¶ 3.A.

3. Modified Principal Balance is ($208,994.25) ("New Principal Balance"). ¶ 3.B.

4. ($36,400.00) of the New Principal Balance is deferred [Non-Interest Bearing Principal Balance"], with no interest or monthly payments. ¶ 3.C.

5. ($172,594.25) is the "Interest Bearing Principal Balance" on which interest will accrue and payments will be made by Debtor. *Id*.

6. The monthly payments and interest rates on the Interest Bearing Principal Balance are, ¶ 3.C.,:

a. For Years 1-5 of the Modified Loan

(1) Interest is 2%
(2) Principal and Interest Payment is $522.66/month

(3) Escrow Payment is $275.14 (subject to adjustment)

b. For Year 6 of the Modified Loan

(1) Interest is 3%
(2) Principal and Interest Payment is $607.21/month
(3) Escrow Payment is as adjusted

c. For Year 7 of the Modified Loan

(1) Interest is 4%
(2) Principal and Interest Payment is $607.21/month
(3) Escrow Payment is as adjusted

d. For Years 8-40 of the Modified Loan

(1) Interest is 4.125%
(2) Principal and Interest Payment is $677.80/month
(3) Escrow Payment is as adjusted

7. The Modified terms "superseded any provisions to the contrary in the Loan Documents, including but not limited to, provisions for an adjustable, step or simple interest rate." *Id*.

8. If a default rate of interest is permitted in the Loan Documents, then in the event of a default, the interest due will be that provided in ¶ 3.C. of the Loan Modification. ¶ 3.F.

POC 2-1 filed by Creditor in the 2015 Chapter 13 Case is signed by John R. Callison, as the Authorized Agent for U.S. Bank National Association. POC 2-1, § 4, states that:

A. Pre-Petition Arrearage as of the January 30, 2015 filing of Chapter 13 Case 15-20683 was ($3,177.95).

B. The Amount of the secured claim was ($209,166.89).

C. The Interest Rate was currently 2.00%

Additionally, on the Mortgage Proof of Claim Attachment to POC 2-1 filed in the 2015 Chapter 13 Case it states that:

A. The principal due on the claim was.....($171,888.07)

B. The interest due as of the filing of the 2015 Case was.....($ 859.44)

C. The Total Principal and Interest Due was.....($172,747.51)

D. Pre-Petition Fees, Expenses, and Charges.....($ 1,582.35)

Exhibit 1 Application of Payments

The Spreadsheet begins March 20, 2018, with a principal balance of $170,467. This appears consistent with the $172,747.51 non-deferred, Interest Bearing Principal Balance stated in the Loan Modification Agreement effective September 1, 2015.

Receipt of $91,700.00 is listed as received March 20, 2018. This is then applied first to the June 1, 2015 to April 1, 2018 monthly loan payments asserted to then have been in default. With the curing of the asserted defaults, the Interest Bearing Principal Balance is stated to be $161,874.80.

After payment of the April 1, 2018 monthly payment, there is computed to be $61,131.14 of the $91,700.00 received on March 20, 2018 remaining. These monies are then applied to the April 1, 2018 Interest Bearing Principal Balance, reducing it to $100,743.66. (There is also a referenced to the "2nd UPB 36,400.00," which the court interprets to be the non-interest bearing, deferred portion of the principal balance under the 2014 Loan Modification.)

This Spreadsheet then shows only the following amounts received and credited to the Interest Bearing Principal Balance:

10/12/2020	$1,075.25
10/20/2020	$ 150.00
11/12/2020	$2,150.50
12/10/2020	$1,075.25
4/13/2020	$3,225.75
5/12/2021	$2,150.50
7/15/2021	$1,075.25

After application of this $10,902.50 to principal, interest, and escrow payments during the period October 10, 2020 to August 2019, the principal balance is computed by Movant to be $97,832.07

DEBTOR'S OBJECTION TO MOVANT'S PROOF OF CLAIM

On May 2, 2022, Debtor filed an Objection to Claim filed by Movant. Dckt. 95. In the Objection it is alleged that the Proof of Claim must be reduced by a $91,700.00 grant Debtor received and then adjusted for payments of $10,752.50, which thereby reduces the current arrearage to $0.00.

The Debtor's Analysis, Section IV of the Objection to Claim, begins with a "Balance" of ($209,166.89) for the total claim, with a pre-petition arrearage of ($3,177.95), when the 2015 bankruptcy case was filed. When one allows for the (36,400.00) non-interesting bearing Deferred Principal Balance, this would result in the Interest Bearing Principal Balance being ($172,766.89) when the 2015 bankruptcy case was filed.

Debtor then tracks the proofs of claims filed by Creditor which states the total claim amount when the various cases were filed by Debtor, which are stated in Debtor's Analysis to be:

Case 15-20683.....January 30, 2015.....($209,166.89)

[Between these two dates Debtor lists $91,699.99 as being paid on Creditor's claim.]
Case 20-21485.....March 1, 2020.....($153,169.92) [this shows a reduction of $55,996.97 in the claim]

[Between these two date Debtor lists $0.00 as being paid on Creditor's claim.]

Case 20-22852.....June 1, 2020.....($159,190.35)

[Between these two Dates Debtor lists $10,752.50 being paid on Creditor's claim, citing to the Trustee's Final report in Case 20-22852. See 20-22853; Trustee's Final Report, p. 1, Dckt. 231.]

Case 21-23539.....October 1, 2021.....($164,860.13)

These payments identified by Debtor total $102,452.49. Debtor asserts that this documents that the $91,700.00 Keep You Home California monies were not properly applied.

Debtor further asserts that all of the $91,700.00 Keep Your Home California monies should have been applied to arrearages, and therefore there should be no arrearage due Creditor.

Debtor further asserts that Creditor has applied the payments to an unauthorized $11,457.44 for attorney's fees and costs, stating that they were "not authorized by this, or any other court."

The only payments made to Creditor are stated to be those that went through the Chapter 13 Trustee in Debtor's cases and the $91,700.00.

CONFIRMATION OF DEBTOR'S PLAN

Debtor, with representation of counsel, filed his Motion to Amend Chapter 13 Plan on January 21, 2022. See Dckt. 56. As discussed in the court's tentative ruling for Debtor's Motion to Confirm, both Movant and the Chapter 13 Trustee have opposed Debtor's Motion on various grounds. See Dckt. 73 and 75.

The court issued an order confirming Debtor's First Amended Plan on April 8, 2022. *See* Dckt. 88.

APRIL 26, 2022, HEARING
ON MOTION FOR RELIEF

Though the Amended Plan, which addresses prior arrearages, has been confirmed, Debtor is now in default for the March and April 2022 monthly plan payments. Debtor's counsel stated that there is a TFS payment scheduled for April 27, 2022, and he will delivered to the Chapter 13 Trustee a

cashier's check for $850, which will cure the March 2022 default.

Counsel for Movant noted that this hearing has been continued multiple times and Movant has allowed Debtor to prosecute the confirmation of the Amended Plan which was to address the pre and post-petition defaults. Unfortunately, new defaults have occurred. Movant's counsel directed the court to the history of multiple, non-successful Chapter 13 filing by Debtor in this court.

At the hearing Debtor was visibly distressed at the proceedings and his view that Movant is trying to take his property. He has previously argued that Movant will not enter into a loan modification with him. As the court noted, Debtor's counsel is effectively forcing a five year loan modification on Movant though the confirmed Amended Chapter 13 Plan. However, the Debtor must be able to perform the Chapter 13 Plan and make the modified loan payments.

In light of the Chapter 13 Trustee being able to make a distribution to Movant in the near future, the court again continues the hearing. This is to afford Debtor and Debtor's counsel to have the hard economic talk about what Debtor can fund, how it can be funded, and what Debtor may need to do to save his exempt equity value in the Property.

June 1, 2022 HEARING

As noted above, the court does not adjudicate claims objections or other substantive disputes in the context of a relief from stay motion. In these post-confirmation settings, the "cause" question focuses on whether Debtor is prosecuting his/her case – i.e. performing the Chapter 13 plan the debtor got confirmed.

The court has "strayed" into looking at the payments and the nature of the claims objection dispute for several reasons. One, to understand the magnitude of any underlying dispute. Second, and most importantly, to afford Debtor the full opportunity to not only understand the obligation and what the parties are asserting, but to make sure that Debtor understands that he and his counsel have their opportunity to present such issues to the court.

In looking at Debtor's Analysis of the payments and total claim, the court notes that he lists there being $91,699.99 in payments to Creditor for the period June 1, 2015 through July 1, 2018.

On Creditor's Exhibit 1, for the period June 1, 2015 to April 1, 2018, states that $30,568.85 was applied for the payments due during that period. Then, the remaining $61,131.14 was applied to the outstanding Interest Bearing Principal Balance of ($161,875) as of April 2018, reducing it to ($100,743.66). In addition, there would be the Deferred Non-Interest Principal balance of ($36,400.00), making the total claim as of April 2018 to be approximately ($136,400.00).

Debtor then identifies an additional payments of $10,752.50 being made after April 2018 through the commencement of this current bankruptcy case.

Proof of Claim 2-1 in Current Bankruptcy Case

The current bankruptcy case was filed on October 12, 2021, which is three years and seven months after April 2018. On Proof of Claim 2-1 in the current case, Creditor states the claim has grown to ($164,860.13). Included in this amount are ($14,994.93) in attorney's fees and other costs, and

($9,628.24) in escrow deficiency and shortage. These total an additional ($24,623.17) which is added to the claim.

If one subtracts out the ($24,623.17), which Debtor may dispute, that leaves ($140,236.83) for the total claim, which includes the ($36,400.00) Deferred Non-Interest Bearing Principal Balance. Removing this amount from the claim would leave ($103,836.83) as the Interest Bearing Principal Balance, including accrued interest.

Creditor computes the April 1, 2018 Interest Bearing Principal Balance to be ($100,743.66) after applying the $91,700.00 payment.

As discussed above, the interest rates during the April 2018 to October 2021 were 3% and 4%. Doing a rough average of 3.5% per year, the Interest Bearing Principal Balance of ($100,743.66) would accrue simple interest of ($3,526.03) a year. Extrapolating that over three years and seven months from April 2018 to the October 2021 filing of the current case, that would total ($12,634.94) in interest.

If $10,752.50 in payments were made during the fifteen months of Debtor's bankruptcy case 20-22852, then that would result in the obligation owing on the Interest Bearing Principal Balance increasing by ($1,882.54), for a total of ($103,626.20). When adding the Deferred Non-Interest Bearing Principal Balance of ($36,400) to it, the total claim, excluding costs, fees, and expenses, would appear to be around, ($140,026.20).

The court's approximation is a little less than the claim as stated by Creditor has claimed in Proof of Claim 2-1 in this case, which, including fees, costs and expenses, is stated to be ($164,860.13). When ($14,994.93) for fees, costs, and expenses are backed out, Creditor's claim for the Interest Bearing Principal Balance portion and the Deferred Non-Interest Bearing Balance portion total ($149,865.20).

This additional ($9,000.00) amount in Proof of Claim 2-1 over the court's estimate of principal and unpaid interest appears to be the Escrow Deficiency of ($8,410.82) and Escrow Shortage of ($1,217.42) listed in Proof of Claim 2-1.

Thus, it does not appear that the claim amount should be reduced further by the $91,700.00 Keep Your Home California payment and the $10,752.50 (a more than $100,000 "adjustment"), but whether the costs, fees, and expenses of ($14,994.93) should be included in the arrearage to be cured.

As stated above, the court is not making any findings or rulings on the amounts of the claim and any objection thereto, but looking at to help the court and parties clarify what issues may actually be in dispute.

Ruling on Motion for Relief

Debtor's confirmed Chapter 13 Plan requires Debtor to make increased monthly plan payments of $1,960.00 commencing with the February 2022 payment and each month thereafter during the term of the Plan. Order, Dckt. 88. Under the Plan, the arrearage claimed by Creditor is to be paid $755.00 a month for fifth seven months (the plan not being fully funded for the first three months). If there is a bona fide dispute over the ($14,994.92) in costs, fees, and expenses, those represent the tail end months of the Plan.

At the hearing on the Motion, Debtor's counsel reported that he has one payment for $1,960 and is getting the second payment shortly to cure the default. Debtor is renting more rooms in the house to increase his income, with Debtor moving into the garage.

Debtor has an application for a California grant to cure the arrearage pending.

Counsel for Movant commented that there is no evidence of the payments or other factual assertions. Counsel for Movant requested that specific information be documented, which counsel for Debtor agreed to promptly do.

The Parties agreed to continue the hearing in light of Debtor's efforts to get the Plan back on track and provide the requested information. The hearing is continued to the same date and time which is set for the Objection to Movant's claim, which the parties indicated may be a moot issue.

Trustee's Non-Opposition
to Debtor's Objection to Claim

On June 14, 2022, Trustee filed a Non-Opposition to Debtor's Objection to Allowance of Claim. Dckt. 111. Trustee explains that U.S. Bank has filed a Proof of Claim which shows a secured amount of $164,860.13 and arrears of $40,899.99. Trustee has placed a hold on U.S. Bank's claim until the objection has been resolved or the court clarifies how the claim will be paid.

June 28, 2022 Hearing

At the hearing, **xxxxxxx**

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Relief from the Automatic Stay filed by Name of Movant ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Relief is **xxxxxxx**

10. 21-23539-E-13 PGM-2 — DEREK WOLF / Peter Macaluso — OBJECTION TO CLAIM OF U.S. BANK, N.A., CLAIM NUMBER 2 — 5-2-22 [95]

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 3007-1 Objection to Claim—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on May 2, 2022. By the court's calculation, 57 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The hearing on the Objection to Proof of Claim Number 2 of U.S. Bank, N.A. is continued to July 26, 2022 at 2:00 pm in Courtroom 33.

Derek L Wolf, the Chapter 13 Debtor ("Objector"), requests that the court disallow the claim of U.S. Bank, N.A. as Legal Title Trustee for Truman 2016 SC6 Title Trust ("Creditor"), Proof of Claim No. 2-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of $164,860.13, with arrears of $40,899.99. Objector asserts that the Claim fails to account for the $91,700.00 provided by Keep Your Home California as well as an additional $10,752.50 paid to Creditor by the Chapter 13 Trustee in Objector's previous Chapter 13 case. Objector asserts that if such payments are properly applied, all arrears will be cured and the total balance due will be substantially reduced.

Additionally, Objector asserts that the "Family Rider" signed by the parties contains an attorney's fees provision (Claim No. 2-1 at 48, § E) which entitles Objector to recover reasonable attorney's fees. Although Objector cites California Code of Civil Procedure § 1717 as authorization to recover such attorney's fees, the court presumes the intended citation was to California Civil Code § 1717.

Trustee's Non-Opposition

On June 14, 2022, Chapter 13 Trustee David P. Cusick ("Trustee") filed a non-opposition to Objector's instant Objection. Dckt. 111. Trustee explains that they have placed a hold on Creditor's claim until this Objection has been resolved or until the court clarifies how the claim should be paid. Trustee further notes that they have paid a total of $4,968.60 to Creditor in on-going, post-petition payments, and $29.92 in pre-petition arrears. The Trustee requests the Objection be continued.

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial evidence to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *In re Austin,* 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

Once a party has objected to a proof of claim, the creditor asserting the claim may not withdraw the claim except on order of the court. FED. R. BANKR. P. 3006.

Upon review of Creditor's Proof of Claim (Proof of Claim 2-1 at 5-9), the court extracts the following information from their "Mortgage Proof of Claim Attachment":

1. Loan Modification Effective Date.....May 1, 2018.

2. Loan Modification Beginning Principal Balance.....$137,143.66.

3. Contractual Monthly Payment Amount:

    a. May 1, 2018 - August 1, 2019.....$614.41

    b. September 1, 2019 - March 1, 2020.....$896.33

    c. April 1, 2020 - August 1, 2020.....$986.00

    d. September 1, 2020 - July 1, 2021.....$1,075.25

    e. August 1, 2021.....$1,004.98

    f. September 1, 2021.....$1,016.32

    g. October 1, 2021.....$1,016.32

4. Total Funds Contractually Due from May 2018 to Filing of Bankruptcy.....**$35,900.24**

5. Total Funds Received from May 2018 to Filing of Bankruptcy.....**$10,902.50**

6. Total Debt as of Petition Date:

   a. Principal Balance - $97,832.07

   b. Deferred Balance - $36,400.00

   c. Interest Due - $7,397.92

   d. Fees, costs due: $14,994.93

   e. Escrow Deficiency for Funds: $8,410.82

   f. Less funds on hand: <$175.61>

   g. **Total Debt: $164,860.13**

   h. **Total Prepetition Arrearage: $40,899.99**

March 2018
$91,700.00 Payment

Creditor's Exhibits in support of their Proof of Claim do not provide an accounting breakdown prior to the May 1, 2018 loan modification date. Debtor's Objection states on or about March 20, 2018, Debtor advanced a grant from Keep Your Home Ca. to Creditor in the amount of $91,700.00. Debtor states the funds were to be applied to arrears from June 2015 through May 2018. Debtor states the amount of claim does not properly account for this payment. The court has no evidence of payments prior to May 2018.

Prior Chapter 13
Plan Payments to Creditor

Debtor states Creditor received $10,752.50 from the Trustee during Debtor's prior Chapter 13 Case, Case No. 20-22852. Upon the court's review of the accounting in Creditor's Proof of Claim, during the life of the prior Chapter 13 Case, from June 1, 2020 (filing date), to August 27, 2021 (date of dismissal), Creditor received $10,902.50. Therefore, the issuance of payments during Case No. 20-22852 appear properly credited.

The court notes there are a few discrepancies between Creditor's Exhibits and Debtor's Motion regarding amount of payments received since May 1, 2018:

Date Received	Creditor's Assertion of Payment Amount	Date Paid	Debtor's Assertion of Payment Amount
		May 1, 2018	$256.35
		June 1, 2018	$1,019.00
		July 1, 2018	$61,131.14
October 12, 2020	$1,075.25		
October 20, 2020	$150.00		
November 12, 2020	$2,150.50		
December 10, 2020	$1,075.25		
April 13, 2021	$3,225.75		
May 12, 2021	$2,150.50		
July 15, 2021	$1,075.25		
		September 1, 2021	$10,752.50
Total Paid	**$10,902.50**		**$73,158.99**

As seen above, payments documented by Creditor and Debtor since May 2018 have a $60,000 difference. Therefore, there appears to be an accounting error on either Debtor or Creditor's end. The court notes Debtor has not listed the date of distribution of the $91,700.00 grant amount in their Motion.

Based on the evidence before the court, the court finds a detailed account of all payments received by Creditor from Debtor is needed to determine whether the grant was properly applied to Debtor's account. Additionally, Creditor and Debtor should address the above discrepancies.

Per court order, the hearing on the Objection to Proof of Claim of Creditor is continued to July 26, 2022 at 2:00 pm in Courtroom 33. Dckt. 115.

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 Claim of U.S. Bank, N.A. as Legal Title Trustee for Truman 2016 SC6 Title Trust ("Creditor"), filed in this case by Derek L Wolf, the Chapter 13 Debtor ("Objector"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Objection to Proof of Claim Number 2 of Creditor is continued to **July 26, 2022 at 2:00 pm in** Courtroom 33, in the Sacramento Division Courthouse.

11.	**18-27148-E-13** **MOH-3**	**WADE NIELSEN** **Michael Hays**	**MOTION TO DISMISS CASE** **6-9-22 [73]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 9, 2022. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

The Motion to Dismiss is xxxxxxx .

Michael O. Hays ("Deceased Debtor's Attorney"), seeks dismissal of the case on the basis that the debtor, Wade Scott Nielsen ("Debtor") is deceased. Deceased Debtor's Attorney filed a Notice of Death (Dckt. 73) and Certificate of Death (Dckt. 75).

Attorney's Notice of Death

Debtors' Attorney filed a Notice of Death of Debtor. Dckt. 73.

DISCUSSION

Death of Debtors

Under 11 U.S.C. § 1016, a Chapter 13 case may be dismissed upon death or incompetency of a debtor. This is largely due to Chapter 13 plans being dependent on the debtor's future earnings. 9 Collier on Bankruptcy P 1016.04 (16th 2021). However, if further administration is possible and in the best interest of the parties, the case may proceed and concluded in the same manner, so far as possible, as though death or incompetency had not occurred, with the court appointing a personal representative successor to the late debtor. 11 U.S.C. § 1016.

Here, there is no indication that further administration is warranted as Debtors' Attorney does not indicate that the family of the decedent has any interest in continuing the case. Dckt. 73.

However, the Debtor is deceased and Deceased Debtor's Attorney has no client who is a party in interest in this bankruptcy case.

At the hearing, **xxxxxxx**

~~Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.~~

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

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

~~The Motion to Dismiss the Chapter 13 case filed by Michael O. Hays ("Debtor's 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 the Motion to Dismiss is granted, and the case is dismissed.~~

12. **19-25355-E-13 PSB-1** **STEPHEN/MARCELLA AZZOPARDI** **Paul Bains** **MOTION TO INCUR DEBT** **5-26-22 [44]**

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 31, 2022. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Incur Debt 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 Incur Debt is ~~granted.~~

Stephen Paul Azzopardi and Marcella Lucille Azzopardi ("Debtor") seek permission to incur post-petition debt to refinance their existing real property commonly known as 90 Coral Lane, Suisun City, CA 94585 ("Property"). The proposed terms of the loan are that Debtor will receive $227,900.00, to be repaid over thirty (30) years at a five percent (5%) fixed interest rate. These payments will represent monthly payments of $1,610.00 for the first eleven (11) months, followed by payments of $1,462.00 for the subsequent nineteen (19) months.

Trustee's Opposition

Chapter 13 Trustee David P. Cusick ("Trustee") filed an Opposition to Debtor's Motion to Incur Debt on June 14, 2022. Dckt. 49. Trustee asserts that Debtor has failed to file supplemental Schedules I and J as required by the Local Bankruptcy Rules. Trustee further asserts that Debtor has failed to explain how they intend to pay for the $2,895.00 indicated as necessary "Cash to Close." Dckt. 44 at 2:12.

With respect to the asserting that Debtor is in violation of the Local Bankruptcy Rules and that as such the requested relief should be denied, the Chapter 13 Trustee states such grounds as:

1. Debtors have failed to file supplemental Schedules I and J as required by the Local Bankruptcy Rules. Their most recent Schedule I and J was filed on 9/09/2019 (DN11).

Opposition, ¶ 1; Dckt. 49. No Local Bankruptcy Rule is cited. It appears that the Chapter 13 Trustee assigns that "legal work" to the court.

The court notes Local Bankruptcy Rules do not require Supplemental Schedules I and J. Rather, Local Bankruptcy Rule 3015-1(h)(1)(c), Debtor must file a declaration which *may* be in the form of Schedules I and J demonstrating an ability to pay all future plan payments, projected living and business expenses, and the refinanced debt.

Clearly, the better practice (and this court may require so as to have complete current income and expense information) is to file Supplemental Schedules I and J, but such is not "required" by the Local Bankruptcy Rules.

However, when looking at Debtor's stale Schedules, Dckt. 11, Debtor does not state a mortgage payment, reflecting that this is a debt that will have to be paid through the Plan. See Debtor's Chapter 13 Plan, Dckt. 12, providing for such mortgage debt to Gregory Funding for an arrearage dividend of $467.00 per month and a post-petition monthly payment of $1,785.20. This totals $2,252.20, which is more than the monthly payment under terms of the refinance loan. [Fn.1.]

FN. 1. To be "fair," the court notes that Debtor did not clearly state in the Motion that: (1) We are currently paying $2,252.20 a month through the Confirmed Chapter 13 Plan (the currently monthly payment and arrearage payment), (2) the monthly payment on the proposed refinance loan is (principal, interest, mortgage insurance, and taxes and insurance escrow) is $1,610 for the first 11 years of the loan and drops to $1,662 for years 12-30 of the loan, and (3) the monthly payment under the proposed loan being less that the current loan (current and arrearage payment), our performance of the Confirmed Chapter 13 Plan demonstrates are current ability to make payments on the proposed loan.

Similar to the court's "tweaky comment" about the Trustee's Opposition, it appears that Debtor assigns to the Chapter 13 Trustee and the court to provide documentation of this essential requirement for granting of this Motion.

This past performance under the Confirmed Chapter 13 Plan demonstrates the ability to continue to make such payment. As the court notes, and the Chapter 13 Trustee indirectly noted, the better practice is, and the Debtor should, file Supplemental Schedules I and J.

Additionally, it is not clear to the court where the funds for the "Cash to Close" will be paid from. At the hearing, XXXXXXXXXX

~~**DISCUSSION**~~

~~A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c)~~

requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." FED. R. BANKR. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

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

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

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

The Motion to Incur Debt filed by Stephen Paul Azzopardi and Marcella Lucille Azzopardi ("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 Stephen Paul Azzopardi and Marcella Lucille Azzopardi are authorized to incur debt pursuant to the terms of the agreement, Exhibit A, Dekt. 46.

13. **22-20264-E-13** **AMANDA HILL** **MOTION TO CONFIRM PLAN**
DBJ-1 **Douglas Jacobs** **5-13-22 [43]**

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 13, 2022. 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 granted.

The debtor, Amanda Ashley Hill ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for Brief Summary of Proposed Plan. Amended Plan, Dckt. 46. 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 13, 2022. Dckt. 48. Trustee opposes confirmation of the Plan on the basis that Debtor may be unable to make Plan payments:

A. Debtor has failed to project when the lump sum payments will be received, therefore, Trustee is unable to determine the feasibility of the proposed Plan. Trustee requests that Debtor's Plan provide that the lump sum payments will be paid to Trustee within thirty (30) days of Debtor receiving the funds, and for Debtor to notify the Trustee in writing every six (6) months updating them on the status of the lump sum payments.

B. Trustee further seeks clarification from Debtor in confirming that the proposed Plan calls for monthly payments of $2,309.99 per month, plus additional lump sum payments in some months. Until this confusion is clarified, Trustee is unable to determine the feasibility of the proposed Plan.

C. Debtor has failed to amend or supplement Schedules I and J, originally filed February 4, 2022. Dckt. 1, Pages 34-39.

DEBTOR'S RESPONSE

Debtor filed a response on June 20, 2022, Dckt. 53, addressing Trustee's above concerns:

1. Debtor agrees to contribute the entire payment received from the lump sum to the Plan and pay Trustee within thirty (30) days of receipt.

2. Debtor will supplement monthly payments when lump sums are received from Fire Victim's Trust. Debtor agrees to notify Trustee when lump sums are received.

3. Debtor submitted Supplemental Schedules I and J.

Debtor's Response appears to resolve Trustee's concerns. At the hearing, XXXXXXXXXX

The Amended Plan complies with 11 U.S.C. §§ 1322, 1323, and 1325(a) 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 Amended Chapter 13 Plan filed by the debtor, Amanda Ashley Hill ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on May 13, 2022, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

14. 22-20280-E-13 MMM-3 — ERNEST CRUZ — Mo Mokarram — MOTION TO CONFIRM PLAN — 5-10-22 [44]

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 10, 2022. By the court's calculation, 49 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 xxxxxxxx.

The debtor, Ernest Fermen Cruz ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly payments of $5,000.00 for a period of three (3) months with a $35,000.00 lump sum payment in month four (4), and an additional $2,000.00 in attorney fees paid through the plan. Amended Plan, Dckt. 47. 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 a Response on May 23, 2022. Dckt. 51. Trustee opposes confirmation of the Plan on the basis that:

A. Attorney fee is more than Local Bankruptcy Rules allow.

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). This Amended Plan violates Local Bankruptcy Rules stating, "The maximum fee that may be charged is $4,000.00 in nonbusiness cases, and $6,000.00 in business cases." Local Bankruptcy Rule 2016-1(c)(1). Schedule I shows Debtor has no business income meaning this is a nonbusiness case and only $4,000.00 in fees are allowed. Without complying with Local Bankruptcy Rules the plan is not confirmable.

Trustee is not opposed to the Debtor correcting the attorney fees in the Order Confirming Plan. At the hearing, XXXXXXXXXX

The Amended Plan does/does not with Local Bankruptcy Rule 2016-1(c)(1) 11 U.S.C. §§ 1322, 1323, and 1325(a) and is/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, Ernest Fermen Cruz ("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 xxxxxxxx

15. 22-20682-E-13 DPC-1 — LORRIE BLEVINS, Mikalah Liviakis — CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK, 4-27-22 [21]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on April 27, 2022. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

B. Plan may not be in Debtor's best efforts as it appears they have more disposable income than the plan provides.

DISCUSSION

Trustee's objections are well-taken.

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 Internal Revenue Service (Dckt. 14). The court continued the hearing to be heard in conjunction with this objection. The court dismissed the Motion to Value. Therefore, this objection is moot.

Failure to Provide Disposable Income / Not Best Effort

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

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

Trustee states Debtor is above median income. Form 122C-2 (Dckt. 19) states Debtor has disposable income of $79.59. This amount over sixty (60) months would yield $4,775.40. Debtor proposes to pay only $853.00 for sixty (60) months with a zero (0) percent dividend to unsecured creditors. The plan fails the means test. Additionally, the current amended Schedule J reflects a net income of $1,046.13. Dckt. 19 at 4.

The Plan proposes to pay a zero percent dividend to unsecured claims, which total $0.00, though Debtor's projected disposable income under 11 U.S.C. § 1325(b)(2) totals $79.59. Thus, the court may not approve the Plan.

May 24, 2022 Hearing

At the hearing, neither Debtor nor Debtor's Counsel appeared. Trustee states they were waiting for a proof of claim to be filed by Creditor IRS, which was filed today. Proof of Claim 11-1. Trustee asks for a continuance of this matter as well as the Objection to Plan so they can evaluate the Proof of Claim and file a status report if there are additional issues.

The court continues the hearing on the Motion to Value the Secured Claim to June 28, 2022 at 2 pm in Courtroom 33.

Trustee's Status Report

Trustee filed a Status Report on June 13, 2022. Dckt. 35. Trustee states the objection concerning the pending motion to value remains outstanding. However, on June 9, 2022 Debtor filed a Notice of Withdrawal the Motion to Value Collateral of Internal Revenue Service. Dckt. 34. Since the Motion to Value was dismissed, it appears the Plan is not confirmable.

June 28, 2022 Hearing

At the hearing xxxxxxxxxxxx

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

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

The Motion to Confirm the Chapter 13 Plan filed by the debtor, Lorrie Lane Blevins ("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. 22-20682-E-13 MRL-1 | **LORRIE BLEVINS** / **Mikalah Liviakis** | **CONTINUED MOTION TO VALUE COLLATERAL OF INTERNAL REVENUE SERVICE**

WITHDRAWN BY M.P. | **3-28-22 [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 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, and Creditor on March 28, 2022. By the court's calculation, 15 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. No opposition was stated at the hearing.

The Motion to Value Collateral and Secured Claim of the Internal Revenue Service is dismissed without prejudice.

The Motion filed by Lorrie Lane Blevins ("Debtor") to value the secured claim of the Internal Revenue Service ("IRS" or "Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 16. Debtor describes the following property being encumbered by the IRS lien for the ($113,602) tax debt:

A. Interests in Real Property. Debtor leases real property commonly known as Lot 24 42 Milestone El Dorado National Forest, with a Cabin thereon, from the National Forest Service, (the "Real Property") which lease Debtor states has a value of $25,000.00.

B. Personal Property:

1. Cash on hand.....$100.00

2. Golden One Checking Account.....$ 957.00
3. Household Goods and Furnishings.....$1,500.00
4. Electronics.....$ 100.00
5. Clothes & Shoes.....$ 50.00
6. Jewelry.....$ 10.00
7. 2 dogs.....$ 1.00
8. American General Annuity.....$ 1.00, and
9. 2011 Chevrolet Silverado Pickup.....$5,500.00

the IRS collateral (the "Personal Property"). Debtor testifies that the Personal Property is encumbered by senior liens totaling ($3,700), which leaves a value of $7,510.00 in the Personal Property for the IRS secured claim. There are no liens encumbering Debtor's interests in the Real Property

Debtor seeks to value the Real Property and Personal Property at a replacement value of $11,219.00 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).

Based on these calculations of value and senior liens, Debtor values the IRS secured claim to be $32,519.00.

Information Under Penalty of Perjury on Debtor's Schedules

In her Declaration, Debtor testifies under penalty of perjury that the Personal Property (not identifying which) is encumbered by a ($3,700.00) debt secured by a senior lien. However, Debtor does not identify the creditor having such a lien. Declaration, ¶ 6; Dckt. 16.

On Schedule D, Debtor states under penalty of having only one creditor with a secured claim, that being Flagship Credit Acceptance, with a claim of ($3,700.00) which is secured by the vehicle.

On Schedule D the Debtor lists the IRS as having a secured claim, but neglected to identify that the federal tax lien encumbers Debtor's real property, identifying only the interest in the real property.

No Proofs of Claim Filed

Neither the IRS nor Flagship Credit Acceptance have filed proofs of claim in this case as of this time. This bankruptcy case was filed on March 22, 2022, so the failure to have filed proofs of claim in the past twenty-one (21) days is not surprising.

Continuance of Hearing

At this early, early stage of the bankruptcy case, the court has no evidence of the two secured claims, other than the Schedules and Debtor's declaration. With no proofs of claim filed, there cannot be disbursements on secured claims.

The court notes that in Debtor's prior bankruptcy case, 21-21639, filed on May 1, 2021 and

dismissed on March 10, 2022, Flagship Credit Acceptance filed Proof of Claim 7-1 for a secured claim of ($4,352.56) and the IRS filed Proof of Claim 13-2 for a secured claim of ($113,604.00) priority claim of ($2,500), and general unsecured claim of ($54,663.35).

Given no claim having been filed in this case, valuing it premature.

Status of Case

The IRS still has not filed a Proof of Claim. Pursuant to Federal Rules of Bankruptcy Procedure 3002(c)(1), "[a] proof of claim filed by a governmental unit for a claim resulting from a tax return filed under §1308 is timely filed if it is filed no later than 180 days after the date of the order for relief or 60 days after the date of the filing of the tax return." Given the filing date was September 18, 2022, the IRS has until September 18, 2022 to file their Proof of Claim.

May 24, 2022 Hearing

At the hearing, neither Debtor nor Debtor's Counsel appeared. Trustee states they were waiting for a proof of claim to be filed by Creditor IRS, which was filed today. Proof of Claim 11-1. Trustee asks for a continuance of this matter as well as the Objection to Plan so they can evaluate the Proof of Claim and file a status report if there are additional issues.

The court continues the hearing on the Motion to Value the Secured Claim to June 28, 2022 at 2 pm in Courtroom 33.

Notice of Withdrawal

On June 9, 2022 Debtor filed a Notice of Withdrawal the Motion to Value Collateral of Internal Revenue Service. Dckt. 34. Debtor states they are attempting to resolve the matter directly with the IRS. No prejudice to the responding party appearing by the dismissal of the Motion ; 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; the Ex Parte Motion is granted, Debtor's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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 of Internal Revenue Service filed by Lorrie Lane Blevins ("Debtor") having been presented to the court, 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. 34, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Value Collateral of Internal Revenue Service is dismissed without prejudice.

17. 18-22885-E-13 LBG-302 RICHARD/LISA RAVALLI Lucas Garcia MOTION TO MODIFY PLAN 5-17-22 [36]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 17, 2022. By the court's calculation, 42 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, Richard John Ravalli and Lisa Marie Ravalli ("Debtor") seeks confirmation of the Modified Plan because Debtor states their Chevy Sonic became inoperable with the cost of repair exceeding the value remaining in the vehicle and they would like to surrender the car and approve the disbursements already made on the car while finishing their plan with a lower monthly payment. Declaration, Dckt. 38. Additionally, Debtor states cost of inflation has affected their food budget. *Id.* The Modified Plan provides payments of $350.00 for 14. Modified Plan, Dckt. 31. 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 14, 2022. Dckt. 41. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor cannot comply with the Plan

B. Failure to complete plan in allotted time

C. The Plan does not appear to be Debtor's best efforts

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). Trustee cannot ascertain whether or not all sums required by the Plan have been paid as the Modified Plan is silent in the Non-Standard Provisions as to the plan payments for the first 46 months. Although Schedule J is filed as an exhibit, Debtor should file Supplemental Schedules I and J with amended cover sheet. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Failure to Complete Plan Within Allotted Time

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in 81 months due to the Debtor under funding the plan and Plan payments not equaling the aggregate dividends. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Not Best Effort

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

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

Trustee states the Plan does not appear to be the Debtor's best effort. Their Supplemental J filed as an exhibit in Dckt. 39 states they have $368.51 in net disposable income. The Modified Plan only provides $350.00 per month and 0% to unsecured creditors.

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, Richard John Ravalli and Lisa Marie Ravalli ("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.

18. **22-20485-E-13 DPC-1** | **THERESA/JAMES QUIOCHO** **Candace Brooks** | **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **4-20-22 [24]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on April 20, 2022. 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. No opposition was stated at the hearing.

The Objection to Confirmation of the Plan is xxxxxxxxxxxxx

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

A. Debtor has failed to provide 2021 tax returns.

B. The Plan has not been served on all creditors. First Meeting of Creditors was conducted on April 14, 2022, and, after it was concluded, Debtors amended the Schedule H which now shows Laumua Ulberg, (Dckt. 20 at 11) as a creditor. However, Debtors have failed to amend the Master Address List. Therefore, it appears not all creditors have been served with the Notice or the Debtor's Plan.

DISCUSSION

Trustee's objections are well-taken.

Failure to Provide Tax Returns

Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A)(I); FED. R. BANKR. P. 4002(b)(3). Debtor has failed to provide the tax transcript. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Failure to Comply with Rules of Notice and Service

Debtors did not follow the proper procedures under Local Bankruptcy Rule 3015-1(c)(3) and Federal Rules of Bankruptcy Procedure 2002(b). Therefore, the Plan cannot be confirmed under 11 U.S.C. § 1325(a)(1).

May 24, 2022 Hearing

Debtor's Counsel states on May 18, 2022, Debtor's Counsel uploaded the 2021 tax return to the Trustee's portal. Trustee confirmed they received the 2021 tax return, however, Trustee's Counsel cannot confirm whether Trustee's office has had time to review the tax return.

Regarding the failure to comply with rules and notice of service, Debtor's Counsel states the Creditor in question is a Co-Obligor (mother of debtor) who signed for the car loan. Trustee states they have not received the 2021 tax return yet. Trustee believes the Co-Obligor's rights are being affected so proof of service on her should be effected. Additionally, Trustee states Debtor is current on plan payments.

Pursuant to 11 U.S.C. § 101, Co-Obligor may fall within the definition of a creditor and may have a claim against Debtor. The hearing on the objection to confirmation is continued to June 28, 2022 at 2 pm in Courtroom 33 for Co-Obligor to be properly served the plan and have the opportunity to file an objection to confirmation.

Trustee's Status Report

On June 14, 2022, Trustee filed a Status Report indicating Debtors are delinquent $463.00 in Plan payments. Dckt. 43. Additionally, Trustee states Debtor has not filed an Amended Master List nor properly served Co-Obligor to give Co-Obligor adequate notice and time to file an objection. Trustee states their objection surrounding tax returns has now been resolved.

June 28, 2022 Hearing

At the hearing xxxxxxxxxxxx

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

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

19. 22-20891-E-13 DPC-1 — DEANA CRUM, Julius Cherry — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK, 5-25-22 [15]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney on May 25, 2022. 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"), opposes confirmation of the Plan on the basis that:

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

B. Debtor cannot comply with the Plan

DISCUSSION

Trustee's objections are well-taken.

Failure to Provide Disposable Income / Not Best Effort

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

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

Trustee calculates an additional $555.36 in average monthly income that is not being accounted for in the Plan; therefore, the Plan is not Debtor's best effort.

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). During the Meeting of the Creditors held May 19, 2022, Debtor testified they own or have an interest in Venmo and Cash App electronic wallet accounts. While amended Schedules A/B were filed, the balance of the accounts have not been disclosed. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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

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

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

20. **20-24123-E-11 HSM-7** **RUSSELL LESTER** **Richard Lapping** **MOTION TO ENFORCE TERMS OF CONFIRMED PLAN O.S.T. 6-21-22 [883]**

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

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

Local Rule 9014-1(f)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, Debtor in Possession's Attorney, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on June 21, 2022. By the court's calculation, 7 days' notice was provided.

The Motion to Enforce Terms of Confirmed Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor in Possession, creditors, 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 Enforce Terms of Confirmed Plan is xxxxx.

First Northern Bank of Dixon ("Creditor") seeks an order from this court to enforce terms of the Plan. Dckt. 883. Specifically, Creditor contends the court should order the Reorganized Debtor and non-debtor spouse to immediately perform their duties under the Plan by executing and delivering to First American Title Company ("First American") "irrevocable and unambiguous escrow / recording instructions for the immediate recordation of the McCune and Carrion Grant Deed."

The Plan provides any party who believes the Reorganized Debtor is not acting in accordance with the Plan must file their request for enforcement with the court. Amended Plan, Dckt. 716 at ¶ 6.23. Creditor states the Plan provides for the sale of the SPE Designated Properties and the Conservation Easement to meet the Prudential Cure and Paydown Requirements, no later than March 31, 2022. "Under the terms of the Plan, if the Conservation Easement closed and the Prudential Cure and Paydown Requirements were satisfied by the March 31, 2022 Sale Trigger Date, the Reorganized Debtor would replace the SPE Independent Manager as manager of the SPE." Motion, Dckt. 883 at 5 ¶ 17. Pursuant to the Plan, failure to sell the Conservation Easement constitutes Plan Defaults. The consequences of failure to meet sale trigger dates include, as summarized by Movant:

a. Interest on any unpaid amounts owing under the Prudential Loans shall increase to the Prudential Allowed Default Rate from the date of the applicable Plan Default [Section 4.1.viii.1)];
b. All sums due to Prudential shall be accelerated and become full due and payable [Section 4.1.viii.2)];
c. Prudential shall be entitled, but not obligated to, exercise any remedies set forth in the Prudential Loan Documents, the Plan, or otherwise available under applicable law, subject to any applicable notice and cure periods under Section 4.1.viii.4) and the sale of obligations of the SPE Independent Manager under Section 4.1.viii.5) [Section 4.1.viii.3)].

20. Section 4.1.viii.5) of the Plan provides that if any Plan Default was not cured within the thirty (30) day cure period, the SPE Independent Manager shall immediately commence selling such parcels of the SPE Designated Properties as necessary to pay all amounts owed to Prudential in full.

21. Section 4.1.viii.6) of the Plan provides that the SPE Independent Manager shall have until the later of December 31, 2022, or three (3) months after the expiration of the thirty (30) day cured period, to sell such parcels of the SPE Designated Properties as necessary to pay off Prudential in full.

22. Section 4.1.viii.6) of the Plan further provides that in the event the SPE Independent Manager does not sell sufficient SPE Designated Properties to pay off Prudential in full, Prudential may, in its discretion, foreclose on any remaining SPE Designated Properties, or allow the SPE Independent Manager to continue to sell such properties.

Id. at ¶¶ 19-22.

Despite Reorganized Debtor's efforts to close the Conservation Easement Sale, he has been unable to and remains in material default under the Plan. Additionally, there is no longer temporary injunctive relief that prevents immediate enforcement of the terms of the Plan.

Creditor has made numerous demands to Reorganized Debtor to record McCune and Carrion Grant Deeds. *Id.* ¶¶ 38-41. Reorganized Debtor has failed to respond. Creditor now seeks court order compelling Reorganized Debtor to "deliver irrevocable and immediately recordable new escrow instructions to First American so that First American will immediately record the Grant Deeds." *Id.* ¶ 42.

At the hearing, XXXXXXXXXX

FINAL RULINGS

21. 17-25094-E-13 MET-4 — DAVID/DOROTHY JONES, Mary Ellen Terranella — MOTION FOR COMPENSATION FOR MARY ELLEN TERRANELLA, DEBTORS ATTORNEY(S), 5-17-22 [67]

Final Ruling: No appearance at the June 28, 2022 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 17, 2022. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Mary Ellen Terranella, the Attorney ("Applicant") for David Jones and Dorothy Mae Jones, 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 June 4, 2018, through September 3, 2020. Applicant requests fees in the amount of $3,750.00 and costs in the amount of $10.50.

TRUSTEE'S NONOPPOSITION

On June 1, 2022, the Chapter 13 Trustee filed a Pleading titled "TRUSTEE'S NON-OPPOSITION TO APPLICATION FOR ADDITIONAL ATTORNEYS FEES." Dckt 72 (emphasis in original). Though having no Opposition to the Motion, the Trustee then continues, "informing" the court that:

1. Discounted Fees - The Application is for fees through June 28, 2022, discounted at a rate of $3,750.00 with costs of $10.50. The Motion does not list hours or costs related to this Motion. The court notes, as the rate is discounted, not including the time spent for this Motion is not dispositive of granting the fees.

2. Exhibits Missing - No exhibits were attached as stated in Applicant's Declaration showing Applicant's billing records.

3. Debtor's Declaration - Debtor has not filed a declaration or any other evidence in support of this Motion.

Id., identified by paragraph number in the Nonopposition of the Trustee. It appears that the above are not grounds in a pleading to the court, but a "personal communication" to Applicant about perceived shortcomings (which the Trustee does not assert as grounds to deny the requested relief).

APPLICANT'S DECLARATION

Applicant filed a declaration on June 14, 2022 (Dckt. 74) in response to Trustee's nonopposition stating:

A. Applicant does not intend to file any further application for fees associated with this Motion.

B. There was a typographical error in the Declaration, and the Motion itself states the detailed billing.

C. Applicant does not ordinarily file debtor declarations with these applications. If there is a requirement, Applicant will provide so in the future.

The court finds the above addresses Trustee's concerns.

APPLICABLE LAW

Statutory Basis For Professional Fees

The basic requirements for allowance of professional fees pursuant to 11 U.S.C. § 330(a)(3) and made applicable to this application by the Local Bankruptcy Rules, are:

(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 as follows:

(4)

(A) Except as provided in subparagraph (B), 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 the filing of Opposition to Trustee's Motion to Dismiss, prepare and file a Modified Plan and Motion to Approve Modified Plan, and prepare and file a second Motion to Incur Debt. 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. 14. Applicant prepared the order confirming the Plan.

Lodestar Analysis

If Applicant believes that there has been substantial and unanticipated legal services that have

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

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

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Motion to Dismiss: Applicant spent 3.4 hours in this category. Applicant reviewed a Motion to Dismiss and Filed an Opposition.

Motion to Modify Plan: Applicant spent 7.8 hours in this category. Applicant prepared and filed a Modified Plan and appeared at the hearing for the Motion to confirm Modified Plan.

Motion to Incur Debt: Applicant spent 8.95 hours in this category. Applicant prepared and filed a Motion to Incur Debt and appeared at the hearing.

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Mary Ellen Terranella	20.15	$350.00	$7,052.50
Total Fees for Period of Application			$7,052.50

Although the total fees for time worked amount to $7,052.50, Applicant is only charging $3,750.00.

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $10.50 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Postage	$0.70	$10.50
Total Costs Requested in Application		$10.50

FEES AND COSTS & EXPENSES ALLOWED

Fees

The unique facts surrounding the case, including the filing of Opposition to Trustee's Motion to Dismiss, prepare and filing a Modified Plan and Motion to Approve Modified Plan, and prepare and filing a second Motion to Incur Debt, 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 $3,750.00 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.

Costs & Expenses

Costs in the amount of $10.50 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case.

The court authorizes the Chapter 13 Trustee under the confirmed plan to pay xx% 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	$3,750.00
Costs and Expenses	$10.50

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 Mary Ellen Terranella ("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 Mary Ellen Terranella is allowed the following fees and expenses as a professional of the Estate:
>
> Mary Ellen Terranella, Professional Employed by David Jones and Dorothy Mae Jones ("Debtor")
>
> Fees in the amount of $3,750.00
> Expenses in the amount of $10.50,
>
> 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.

22. **22-20904-E-13 DPC-1** **LORNE/JAMIE WILLIAMS** **Randall Ensminger** **OBJECTION TO DISCHARGE BY DAVID P. CUSICK** **5-23-22 [16]**

Final Ruling: No appearance at the June 28, 2022 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 and Debtor's Attorney on May 23, 2022. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Objection to Discharge is sustained.

David Cusick, the Chapter 13 Trustee, ("Objector") objects to Lorne Howard Williams and Jamie Lynn Williams' ("Debtor") discharge in this case. Objector argues that Debtor is not entitled to a discharge in the instant bankruptcy case because Debtor previously received a discharge in a Chapter 7 case.

Debtor filed a Chapter 7 bankruptcy case on October 14, 2019. Case No. 2019-26406. Debtor received a discharge on January 28, 2020. Case No. 2019-26406, Dckt. 24.

The instant case was filed under Chapter 13 on April 11, 2022.

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

Here, Debtor received a discharge under 11 U.S.C. § 727 on January 28, 2020, which is less than four years preceding the date of the filing of the instant case. Case No. 2019-26406, Dckt. 24.

Therefore, pursuant to 11 U.S.C. § 1328(f)(1), Debtor is not eligible for a discharge in the instant case.

Therefore, the Objection is sustained. Upon successful completion of the instant case (Case No. 22-20904), the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Discharge filed by David Cusick, the Chapter 13 Trustee, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to Discharge is sustained, and upon successful completion of the instant case, Case No. 22-20904, the case shall be closed without the entry of a discharge.

23. 22-20508-E-13 WLG-1 — LUGENE MARI GONZALES — Michael Reid — MOTION TO CONFIRM PLAN — 5-13-22 [15]

Final Ruling: No appearance at the June 28, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on May 13, 2022. 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 Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Lugene Mari De Guzman Gonzales ("Debtor"), has provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on May 23, 2022. Dckt. 20. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) 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 Chapter 13 Plan filed by the debtor, Lugene Mari De Guzman Gonzales ("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 Chapter 13 Plan filed on March 18, 2022, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

24. 21-23555-E-13 RJ-4 **TRACI HAMILTON** **Richard Jare** **MOTION TO CONFIRM PLAN** **4-29-22 [98]**

DEBTOR DISMISSED: 5/6/2022

Final Ruling: No appearance at the June 28, 2022 hearing is required.

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

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

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

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

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

25. **19-27175-E-13 PGM-4** **ADAM/SHERRI NEWLAND**
Peter Macaluso

MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTORS ATTORNEY(S)
5-27-22 [99]

Final Ruling: No appearance at the June 28, 2022 hearing is required.

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

Sufficient Notice Not 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 27, 2022. By the court's calculation, 32 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). 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 Adam Scott Newland and Sherri Ann Newland, 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 April 6, 2022, through May 4, 2022. Applicant requests fees in the amount of $1,890.00.

TRUSTEE'S NONOPPOSITION

On June 9, 2022, Trustee filed a nonopposition stating the services were needed and the fees reasonable. 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 filing Motion to Modify Plan due to Trustee's filing Application to Dismiss. 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. 38. Applicant prepared the order confirming the Plan.

Lodestar Analysis

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

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

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Motion to Dismiss: Applicant spent 2.05 hours in this category. Applicant reviewed the Motion to Dismiss, met with Client, filed an Opposition to the Motion to Dismiss, and appeared in court.

Modified Plan: Applicant spent 3.35 hours in this category. Applicant prepared, and filed a Motion to Modify Plan after meeting with Client.

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Peter G. Macaluso	5.40	$350.00	$1,890.00

Total Fees for Period of Application	$1,890.00

FEES ALLOWED

The unique facts surrounding the case, including filing Motion to Modify Plan due to Trustee's filing Application to Dismiss, 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 $1,890.00 is approved pursuant to 11 U.S.C. § 330 and authorized to be paid by David Cusick ("the Chapter 13 Trustee") from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

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

Fees $1,890.00

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 Adam Scott Newland and Sherri Ann Newland ("Debtor")
>
> Fees in the amount of $1,890.00
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for Debtor.
>
> **IT IS FURTHER ORDERED** that David Cusick ("the Chapter 13 Trustee") is authorized to pay the fees allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case.