

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Sacramento, California

July 12, 2022 at 2:00 p.m.

1. [22-21301](#)-E-13 **QING SONG LIU** **STATUS CONFERENCE RE: VOLUNTARY**
[RHS-1](#) **Pro Se** **PETITION**
5-24-22 [\[1\]](#)

Debtor's Atty: Pro Se

Notes:

Set by order of the court filed 6/29/22 [Dckt 22]

[NBL-1] Motion for Relief from Automatic Stay [creditor NT Dunhill I LLC] filed 6/29/22 [Dckt 23], to be heard 8/2/22 at 1:30 p.m.

Third Motion to Extend Deadline to File Schedules filed 7/5/22 [Dckt 30]

The Status Conference is XXXXXXX
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On May 24, 2022, Qing Song Liu, the Debtor, commenced this Chapter 13 case, stating that Debtor was doing so in *pro se* (without an attorney representing Debtor). On June 21, 2022, Debtor filed a request for an extension of time (Dckt. 17) to file Statement of Financial Affairs, Schedules and other required documents due at the commencement of a bankruptcy case (Notice of Incomplete Filing (Dckt. 7).

In the Request for Extension of Time, a copy of which is attached hereto as Addendum A, Debtor discloses that a lawyer has been representing Debtor in the filing and now prosecution of this case, though the attorney has not appeared as counsel for Debtor. No Disclosure of Compensation (required Form B2030) has been filed by the attorney. The information in the Request for Extension of Time includes the following (the court paraphrasing except where the "text is in quotation marks"):

- A. "We met a lawyer online called Paul."
- B. "We were instructed to go Chase bank to deposit \$1,800 to an account called FourGen, account #610 256-528."

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- C. “He helped us file bankruptcy.”
- D. “The very next day, he told us to deposit a \$7,500 money order to the same account, telling us that it was going to the courthouse for the restaurant’s rent, and so following his instructions, we did.”
- E. “Now, he has asked us for a third time to deposit \$7,500 again to that same account, and we were becoming very suspicious, so we asked for a receipt and we also asked for proof that he was a lawyer, but he didn’t even give us a business card when we requested.”
- F. “Whenever we brought up that topic, he would just change the subject, telling us to continue depositing the money.”
- G. “We were told that if we didn’t follow his instructions, he would cease to continue representing us and helping with our case.”

Dckt. 17. Debtor then states that they are looking for a new attorney and need additional time to have the documents completed.

ORDER FOR STATUS CONFERENCE AND FORWARDING THE REQUEST FOR EXTENSION OF TIME

Clearly the information concerning “Attorney Paul” raises some questions about a person providing legal representation “behind the scenes” in Federal Court. From what Debtor states, some review of the relationship with “Attorney Paul,” the moneys paid to “Attorney Paul,” and the legal services provided by “Attorney Paul” is necessary.

Fortunately, the U.S. Trustee system was set up across the Nation by Congress to provide an independent party to monitor, review, and have standing to address proceedings in the United States Bankruptcy Court. The Office of the U.S. Trustee for Region 17 (which includes the Eastern District of California) and its attorneys actively fulfills those duties.

Here, it appears that someone identified as “Attorney Paul” has been providing Debtor with legal representation in connection with and during this Bankruptcy Case. The dollar amounts that Debtor has paid, and additional amounts requested to be paid have not been authorized by this Court (as required by Local Bankruptcy Rule 2016-1) and are out of the norm for what the court sees in Chapter 13 bankruptcy cases.

It appears that Debtor has information concerning “Attorney Paul,” which would include: (1) the internet information where they found “Attorney Paul,” (2) the bank and account number where they have been depositing monies to “Attorney Paul,” (3) phone number or other information in which they have communicated with “Attorney Paul,” and (4) likely other information that can assist the U.S. Trustee in reviewing this and communicating with “Attorney Paul” about his reported representation in this Bankruptcy Case.

At the Status Conference, **XXXXXXX**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and party requesting special notice, on May 31, 2022. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Firefighters First Credit Union ("Creditor") is denied without prejudice, Creditor's secured claim being filed in the amount of \$9,7711.22. Proof of Claim 10-1.

The Motion filed by Austin James Paul Merritt ("Debtor") to value the secured claim of Firefighters First Credit Union ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 80. Debtor is the owner of a 2004 Ford F250 Super Duty Crew Cab ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$9,915.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Trustee's Response

On June 21, 2022, David P. Cusick, the Chapter 13 Trustee ("Trustee") filed a response to Debtor's Motion to Value Collateral. Dckt. 85. Trustee points out several apparent discrepancies between Debtor's motion and Creditor's proof of claim.

First, Debtor states in their motion that the Vehicle was purchased on February 2, 2019. Dckt. 78 at 2:2. However, Creditor's Proof of Claim includes a Loan Agreement which lists the transaction date as February 12, 2020. Proof of Claim No. 10, Page 4.

Second, the Loan Agreement states that Debtor gave a security interest in “Personal property (other than household goods or any dwelling) securing other loans with [Creditor].” *Id.* Trustee states this means that Debtor used the Vehicle as collateral to secure a loan with Creditor in 2020, rather than the Vehicle being purchased using the loan.

Finally, Trustee states that “Creditor filed Proof of Claim No. 10-1 in the secured amount of \$9,711.22.” Dckt. 85 at 2:8. (The Trustee’s Response contains a clerical error referencing Proof of Claim 10-1 as an unsecured claim. Proof of Claim 10-1 is filed as a \$9,711.22 secured claim.)

DISCUSSION

Proof of Claim

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

Here, Debtor’s Declaration states “In my opinion, the replacement value of the vehicle is nine thousand nine hundred fifteen dollars (\$9,915).” Declaration, Dckt. 80, at 1:29-2:1. Debtor’s Declaration presents a mere conclusion, not supported by financial information or factual arguments. *In re Austin*, 583 B.R. at p. 483. Creditor’s Proof of Claim, however, provides a Kelly Blue Book evaluation, valuing the collateral at \$18,143.00. Proof of Claim 10-1. Therefore, Debtor did not present substantial evidence to rebut Creditor’s Proof of Claim.

Additionally, Debtor testifies that the Vehicle has a value of \$9,915.00, which is in excess of the secured claim filed in the amount of \$9,711.22. It is unclear why a motion to value has been filed for an oversecured claim even using the Debtor’s valuation. Debtor filed the Motion on May 31, 2022, which is three months after Creditor filed Proof of Claim 10-1.

The Motion does not make any reference to Proof of Claim 10-1 or that Creditor states the claim is “only” \$9,711.22. The Motion is styled as one to “Value Collateral” of this Creditor. 11 U.S.C. § 506 does not provide for the court issuing an order valuing collateral, but an order determining the amount of a secured claim when such amount is in dispute. There is no reason for this court to “determine” the amount of a claim for which no bona fide dispute has been asserted.

The Motion is denied without prejudice.

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

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

The Motion to Value Collateral and Secured Claim filed by Austin James Paul Merritt (“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 Value Collateral and Secured Claim of Firefighters First Credit Union (“Creditor”) is denied without prejudice.

3. [22-20404-E-13](#) **SUSANA LOPEZ** **MOTION TO CONFIRM PLAN**
[DPR-1](#) **David Ritzinger** **5-26-22 [30]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 27, 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, Susana Lopez (“Debtor”), seeks confirmation of the Amended Plan. The Amended Plan provides for payments of \$341.00 per month for sixty (60) months, with \$242.01 paid monthly to secured claims, and a one percent (1%) guaranteed dividend to nonpriority unsecured claims. Amended Plan, Dckt. 35. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on June 21, 2022. Dckt. 46. Trustee opposes confirmation of the Plan on the basis that:

- A. The Proof of Service filed alongside the motion was incomplete and does not show who was served.

DEBTOR'S AMENDED PROOF OF SERVICE

Debtor filed an Amended Proof of Service on June 21, 2022. Dckt. 51. In it, Debtor's attorney declares under penalty of perjury that the Motion to Confirm the Amended Plan was served by mail on all necessary parties on May 27, 2022.

DISCUSSION

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Susana Lopez ("Debtor") has provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on June 21, 2022 (Dckt. 46), but the concerns raised within were cured within the same day by Debtor's Amended Proof of Service (Dckt. 51). The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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, Susana Lopez ("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 26, 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.

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, 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).

<p>The Motion to Confirm the Modified Plan is denied.</p>
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The debtor, Wille Jean Norman (“Debtor”) seeks confirmation of the Modified Plan to account for priority tax claims filed by the IRS and Franchise Tax Board. Declaration, Dckt. 61. The Modified Plan provides Plan payments of \$475.00 per month for thirty-six (36) months, and a zero percent (0%) dividend to unsecured claims. Modified Plan, Dckt. 59. 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 28, 2022. Dckt. 66. 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 \$135.00 delinquent in plan payments, which represents less than one month of the \$340.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

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, Willie Jean Norman (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on June 1, 2022. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

The Objection to Claimed Exemptions is sustained, and the exemptions are disallowed in their entirety.

The Chapter 13 Trustee, David P. Cusick ("Trustee") objects to Timothy Alan Cosetti and Sheryl Ann Cosetti's ("Debtors") claimed exemptions under California law because Debtors have both lived in Iowa since July 2020, with Mr. Cosetti traveling back and forth to Folsom, California for work. 11 U.S.C. § 522(b)(3)(A) requires debtors to have resided in California for at least two (2) years prior to filing the petition or the plurality of the six (6) months prior to that date. Debtors' Amended Schedules A/B and C claim \$125,104.00 in California Code of Civil Procedure § 703 homestead exemptions despite Debtors not qualifying as California residents for said exemptions. Dckt. 25. The Chapter 13 Trustee's Objection is sustained, and the claimed exemptions are disallowed.

A claimed exemption is presumptively valid. *In re Carter*, 182 F.3d 1027, 1029 at fn.3 (9th Cir.1999); *See also* 11 U.S.C. § 522(l). Once an exemption has been claimed, "the objecting party has the burden of proving that the exemptions are not properly claimed." FED. R. BANKR. P. RULE 4003(c); *In re Davis*, 323 B.R. 732, 736 (9th Cir. B.A.P. 2005). If the objecting party produces evidence to rebut the presumptively valid exemption, the burden of production then shifts to the debtor to produce unequivocal evidence to demonstrate the exemption is proper. *In re Elliott*, 523 B.R. 188, 192 (9th Cir. B.A.P. 2014). The burden of persuasion, however, always remains with the objecting party. *Id.*

Review of Debtor's Schedules

Debtor filed the Original Schedules A/B on March 24, 2022. Dckt. 1. On Schedule A/B Debtor states that Debtor owns no real property. Amended Schedule A/B also states that Debtor owns no real property. Dckt. 25.

On Schedule G, Debtor states under penalty of perjury that debtor is not a party to any unexpired leases. Dckt. 1 at 27.

On Schedule I Debtor states having combined monthly income of \$9,851.00 (after withholding for taxes and Social Security that is 27.5% of Debtor's combined monthly gross wages). Dckt. 1 at 29-30.

On Schedule J, for their two adult family unit, Debtor shows rental (the court presumes rental since no provision is made for property taxes or insurance) expense of (\$3,000). Dckt. 1 at 31-32. For these two adults, Debtor states that the necessary monthly expenses, which total (\$6,711) include:

- A. Food and Housekeeping Supplies.....(\$950)
- B. Clothing and Laundry.....(\$220)
- C. Personal Care Products and Services.....(\$250)
- D. Medical and Dental Expenses.....(\$300)
- E. Transportation.....(\$500)
- F. Entertainment.....(\$250)
- G. Charitable/Religious Donations.....(\$300)

Even for what appear to be some "generous" monthly expenses, Debtor states under penalty of perjury having \$3,080.00 in Monthly Net Income to fund a Chapter 13 plan. *Id.* At 32.

Debtor's proposed Chapter 13 Plan provides for a monthly Plan payment of ONLY \$1,390.00. Plan, ¶ 2.01; Dckt. 3. This \$1,390.00 is ONLY 45% of Debtor's Monthly Net Income available to fund the Plan. This leaves an EXTRA \$1,690.00 a month that the Debtor pockets. In one year, this is an "extra" \$20,280 that Debtor DIVERTS away from timely paying creditors.

Debtor's Chapter 13 Plan sets a 60 month terms to repay creditors on their claims. Plan, ¶ 2.02. *Id.* No provision is made for paying any secured claims. The Chapter 13 Plan does provide to pay \$55,524.00) in priority tax claims and a 100% dividend for general unsecured claims. Plan, ¶¶ 3.12, 3.14. While paying these claims in full, Debtor stretches the unsecured claims out over five years with no interest.

Over the five years of the Plan, the Debtor diverts \$101,400 (\$20,280 x 5 years) away from paying creditor claims and into the abyss of whatever pocket, investment, or other "off the books" expenses the Debtor desires to spend this EXTRA money.

If Debtor uses \$2,800.00 a month of the Net Monthly Income (Debtor keeping \$280.00 as a contingency reserve) then the (\$107,137) in claims, then Debtor could have them paid and be out of bankruptcy in 39 months $((\$170,137)/\$2,500.00 \text{ per month})$.

Rather than funding the Plan with the Monthly Net Income (and keeping an extra \$280 a month in addition to Debtor stating some various generous expenses), Debtor instead proposes to have creditors finance the repayment for free, which Debtor diverts more than \$100,000 away from creditors.

This raises significant, and serious, issues concerning Debtor's information provided under penalty of perjury, as well as this case being filed and prosecuted in good faith.

At the hearing, **XXXXXXX**

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

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

The Objection to Claimed Exemptions filed by The Chapter 13 Trustee, David P. 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 Objection is sustained, and the claimed exemptions for \$125,104.00 under California Code of Civil Procedure § 703 are disallowed in their entirety.

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 18, 2022. By the court's calculation, 20 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 presented at the hearing.

The Objection to Confirmation of Plan is XXXXXXXXXX

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

- A. Debtor failed to submit adequate proof of their social security number.
- B. Debtor has failed to file federal tax returns for 2017, 2018, and 2019.
- C. Debtor may be unable to make payments under the plan.

DISCUSSION

Trustee's objections are well-taken.

Failure to Provide Social Security Number

Debtor has failed to submit proof of their social security number to Trustee as required by Federal Rules of Bankruptcy Procedure 4002(b)(1)(B). Attempting to confirm a plan while failing to provide proof of identification represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Failure to File Tax Returns

Debtor provided Trustee a “tax transcript for the 2020 year.” It is not clear to the court whether this tax transcript confirms Debtor filed their 2020 tax returns. However, Debtor admitted at the Meeting of Creditors that they have not filed federal income tax returns for the four years prior to filing. 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).

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). Although Debtor lists Home Energy Renovation Opportunity Loan on Schedule D (Dckt. 1, Page 19, Item 2.1), they have not provided for this debt in the Plan, and there is no expense listed on Schedule J (Dckt. 1, Pages 27-28) to provide for payment of this claim. Without an accurate picture of Debtor’s financial reality, the court cannot determine whether the Plan is confirmable.

At the hearing, counsel for the Debtor addressed the steps being taken by the court, and the parties agreed to a continuance.

Trustee’s Status Report

Trustee filed a status report on June 29, 2022. Dckt. 21. In the report, the Trustee explains that they remain uncertain whether Debtor’s Plan is feasible because Debtor still lists their Home Energy Renovation Opportunity Loan on Schedule D (Dckt. 1 at 19) and yet do not provide for the debt in their listed Schedule J expenses (Dckt 1. at 27-28). However, Trustee does note that Debtor has verified their social security number and filed all required tax returns, thus curing Trustee’s other objections to confirmation.

July 12, 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 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 Plan is **xxxxxxx**.

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, 70 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).

<p>The Motion to Confirm the Amended Plan is XXXXX.</p>

The debtor, Jack Michael Jodoin and Maryanne Susan Jodoin (“Debtor”), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly payments of \$250.00, paid over sixty (60) months, with unsecured creditors receiving a zero percent (0%) guaranteed dividend. Amended Plan, Dckt. 66. 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 28, 2022. Dckt. xx. Trustee opposes confirmation of the Plan on the basis that:

- A. Delinquency: Debtor is delinquent in Plan payments.
- B. Feasibility:
 - 1. Debtor appears to be withholding tax refunds.

2. Debtors have failed to amend their Schedules I and J, and therefore Trustee cannot assess the feasibility of the Plan.
 3. Debtors have failed to clarify what income is available to Maryanne Jodoin.
- C. The proposed Amended Plan would pay Debtor's attorney more than total fees allowed under Local Bankruptcy Rule 2016-1(c).

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is \$250.00 delinquent in plan payments, which represents one month of the \$250.00 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).

Failure to Provide Disposable Income

Trustee alleges that the Plan is not feasible because it fails to provide tax returns. 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.

Debtors have provided the Trustee with their 2020 tax returns which show tax refunds indicating that they are over withholding taxes. Any future tax refunds over \$2,000.00 should be paid as an additional payment

Failure to Afford Plan Payment / Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor has failed to file amended or supplemental Schedules I and J and therefore Trustee cannot assess the feasibility of the Plan.

Additionally, Debtor has supplied insufficient information relating to the income of debtor Maryanne Jodoin to allow Trustee to determine the feasibility of the Plan. Trustee is unclear on Maryanne Jodoin's employment status and whether they are receiving volleyball income. Debtor has failed to file an Amended Form 122C to include any such income. Also, the Plan states that Debtor's attorney has already

been paid \$225.00 in attorney's fees, and yet the Plan provides for \$4,000.00 in additional fees as well. Dckt. 66, at 2. However, Debtor states that Debtor's attorney will seek approval based on Local Bankruptcy Rule 2016-1(c). Therefore, a total payment of \$4,225.00 would be in excess of the maximum payment allowed under that rule. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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, Jack Michael Jodoin and Maryanne Susan Jodoin ("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.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on June 23, 2022. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

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

US Bank Trust National Association, Not In Its Individual Capacity But Solely As Owner Trustee For VRMTG Asset Trust, its successors and/or assignees ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

- A. There are insufficient funds to cure the arrears over the sixty month period.
- B. Debtor does not have sufficient income to increase the plan payments to cure the arrears.

DISCUSSION

Creditor's objections are well-taken.

Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts \$40,068.97 in pre-petition arrearages. The Plan only proposes to cure \$36,667.41 with a \$611.12 per month dividend. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearages.

Failure to Afford Plan Payment / Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor needs to increase their arrearage dividend to Creditor from \$611.12 per month to \$667.82 per month. Debtor's current Plan payment of \$1,714.00 per month is the same as their monthly net income. Therefore, there is not enough disposable income to increase Plan payments to cure all arrearages as required by the Bankruptcy Code and Plan. 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 US Bank Trust National Association, Not In Its Individual Capacity But Solely As Owner Trustee For VRMTG Asset Trust, its successors and/or assignees ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on May 24, 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 granted and the Amended Plan is confirmed.

The debtor, Mary Rose Carbone (“Debtor”), seeks confirmation of the Amended Plan. The Amended Plan provides for plan payments of \$330.00 for months 1-60, and 0% dividend for unsecured claims. Amended Plan, Dckt. 19. 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 28, 2022. Dckt. 29. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor may be failing to provide disposable income.

DISCUSSION

Failure to Provide Disposable Income

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

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

The Trustee states, the Debtor used the means test figures to calculate disposable income that should be used for cases filed on, or after, May 15, 2022. That amount shows negative (\$66.62). If the Debtor had use the correct figures for cases file between April 14, 2022 and May 14, 2022, the Trustee estimates the monthly disposable income would be \$294.00. This would provide a total approximately \$17,640.00 to unsecured creditors over the sixty (60) months.

Upon the court's review, the case was filed April 14, 2022. Pursuant to the means testing data, available at <https://www.justice.gov/ust/means-testing>, the court confirms Debtor used IRS Data & General Information for Completing Bankruptcy Forms for cases filed on or after May 15, 2022. Using the correct data, Debtor has more disposable income. Therefore, the Plan does not appear in Debtor's best efforts.

Means Test Financial Information Not Correct Information for Computing Projected Disposable Income

The Trustee's Opposition to Confirmation provides a financial analysis based on the historic Means Test from the past and hypothetical expenses, which while appropriate to determine the minimum required plan term, it does not provide forward looking projected disposable income to fund a plan. As established by the Supreme Court in *Hamilton v. Lanning*, 560 U.S. 505 (2010), the parties and court are to look at the projected computed disposable income at the time of confirmation, based on the then current accurate financial information, and take into account projected anticipated changes. The Supreme Court expressly rejected the contention that projected disposable income is merely the mechanical means test historic computation.

This bankruptcy case was filed on April 14, 2022, and the most current, forward looking, accurate financial information is provided by Debtor under penalty of perjury on Schedules I and J. Dckt. 1.

On Schedule I Debtor states having monthly take home income (after withholdings and a voluntary retirement plan contribution) of \$4,296.00. *Id.* at 26-27.

On Schedule J Debtor states having monthly expenses for his household of one adult of (\$3,966.00). *Id.* at 28-30.

Debtor computes, under penalty of perjury, that his projected disposable income is \$330.00 a month.

Debtor's Amended Plan (Dckt. 19) provides for funding the Plan with the \$330.00.00 of monthly projected disposable income.

If the Trustee believes than any of the current, projected expenses stated on Schedule J are unreasonable or improper, the Trustee could identify such, state the basis why the expense was unreasonable, and advance such an opposition.

If the Trustee believes that the expense information is false, merely the statutory amounts used for the mechanical computation for means test, and not accurate expenses for Debtor, the Trustee could assert that opposition.

All the Trustee's Opposition asserts that if the court was doing a mechanical means test calculation, Debtor would be using the wrong expenses permitted for that mechanical analysis. The Trustee does not assert that the expenses are not good faith, accurate, current information used for determining projected disposable income.

The Amended Plan does comply 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, Mary Rose Carbone ("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 granted, and the proposed Chapter 13 Plan filed on May 24, 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.

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 June 15, 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. At the hearing -----.

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

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

- A. Debtor has failed to file the 2017 and 2018 tax returns.

Debtor's Response

Debtor states that on, or before, June 27, 2022 they filed both 2017 and 2018 tax returns with the IRS and FTB. Additionally, on, or before, June 28, 2022 Debtor states they paid the first Plan payment of \$4,100.00 via third-party payment system TFS.

The court notes this appears to resolve Trustee's Objection to Confirmation of Plan. 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 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 is overruled, and Maria Fatima Delgado Ibasan (“Debtor”) Chapter 13 Plan filed on May 4, 2022, is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

11 thru 12

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 June 15, 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. At the hearing -----.

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

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

- A. Debtor may not be able to afford Plan payments as their gross monthly income appears to be less than what is stated on their schedules.
- B. Debtor is delinquent on Plan payments.
- C. Debtor's Plan relies on Valuing Collateral.

DISCUSSION

Trustee's objections are well-taken.

Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Trustee states, on Schedule I Debtor reports a gross monthly income of \$5,867.20. Dckt. 12. However, at the First Meeting of Creditors, held June 9, 2022, Debtor states he has been staying in Tennessee temporarily to care for his terminally ill parent. Additionally, Trustee received pay advices dated May 4, 2022 stating year-to-date Debtor has a gross income of \$7,990.20. Trustee is not clear on the current financial state of the Debtor to make Plan payments. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Delinquency

Debtor is \$511.00 delinquent in plan payments, which represents one month of the \$511.00 plan payment. Before the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor'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 Ally Financial. Debtor has filed a Motion to Value the Secured Claim of Ally Financial, Dckt. 18, set for hearing and granted on the same date as this objection. Therefore, this objection is resolved.

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

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

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

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

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

Final Ruling: No appearance at the July 12, 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, Creditor, parties requesting special notice, and Office of the United States Trustee on June 10, 2022. By the court’s calculation, 32 days’ notice was provided. 28 days’ notice is required.

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

The Motion to Value Collateral and Secured Claim of Ally Financial (“Creditor”) is granted, and Creditor’s secured claim is determined to have a value of \$9,094.00.

The Motion filed by Shannon Todd Butler (“Debtor”) to value the secured claim of Ally Financial (“Creditor”) is accompanied by Debtor’s declaration. Declaration, Dckt. 21. Debtor is the owner of a 2015 Chrysler 200 Limited (“Vehicle”). Debtor seeks to value the Vehicle at a replacement value of \$9,094.00 as of the petition filing date. As the owner, Debtor’s opinion of value is evidence of the asset’s value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Trustee’s Non-Opposition

Trustee filed a non-opposition on June 27, 2022. Dckt. 27. Trustee states Creditor filed a Proof of Claim claiming \$9,094.00 to be secured and \$11,251.60 to be unsecured totaling \$20,345.60. Trustee requests the Motion to Value Collateral of Ally Financial be granted.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on November 4, 2014, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$20,345.60. Proof of Claim, No. 1-1. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of \$9,094.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion to Value Collateral and Secured Claim filed by Shannon Todd Butler ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Ally Financial ("Creditor") secured by an asset described as 2015 Chrysler 200 Limited ("Vehicle") is determined to be a secured claim in the amount of \$9,094.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$9,094.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on March 20, 2022. By the court's calculation, 37 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 XXXXXXXXXXXX.

The debtor, Dennis A. Frazier ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly plan payments of \$1,750.00 for 57 months, and a 100% dividend to unsecured claims totaling \$12,047.35. Amended Plan, Dckt. 50. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CREDITOR'S CONDITIONAL OBJECTION

First Trust ("Creditor") holding a secured claim filed a Conditional Objection on April 7, 2022. Dckt. 75. Creditor conditionally opposes confirmation of the Plan on the basis that:

- A. Creditor requires clarification that the Plan will be amended to incorporate the entirety of Creditor's judgment if ongoing adversary proceeding is resolved in Creditor's favor.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”) filed an Opposition on April 11, 2022. Dckt. 78. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor’s Plan is contingent on the court’s granting of Debtor’s Motions to Value Secured Claim and To Avoid Lien.
- B. It is unclear whether Debtor intends to prosecute the ongoing adversary proceeding.
- C. Debtor failed to file supplemental Schedules I and/or J.

DEBTOR’S REPLY

Debtor filed a reply to Trustee’s opposition on April 19, 2022. Dckt. 84. In their reply, Debtor responds to Trustee with the following:

- A. Debtor’s Motion to Avoid Lien is set for hearing on May 10, 2022 and has not been opposed yet.
- B. Regarding the Adversary Proceeding, Case No. 22-02008, Debtor and Creditor First Trust applied for Bankruptcy Dispute Resolution (“BDR”). As a means of resolving the claim. Debtor will file a cross-complaint if BDR is not successful.

DISCUSSION

Clarification of Creditor’s Claim

Creditor has a recorded deed of trust secured by Debtor’s residence in the amount of \$75,000.00. Claim 2-1. Debtor did not object to Creditor’s secured claim. Creditor initiated Adversary Proceeding No. 22-02008 (“*First Trust v. Frazier*”) to determine whether the deed of trust is a valid and enforceable lien against Debtor’s residence. Objection, Dckt. 75 at 2:16-18. It should be noted that Creditor’s Objection contains a typographical error and mistakenly references the case number as 22-020078 rather than 22-02008.

Creditor is aware that Debtor’s Plan provides an “opaque statement” indicating that Debtor will amend the Plan within fourteen (14) days of the “entry of order [of the judgment in *First Trust v. Frazier*].” *Id.* at 2:27-28. However, Creditor requests the language to specifically state:

[I]n the event that the judgment in [*First Trust v. Frazier*] provides that the Deed of Trust is [a] valid lien on Debtor’s real property and/or is a judgment for money owed by Debtor to Creditor First Trust, that the Amended Plan will be further amended to be entirely consistent with the judgment in [*First Trust v. Frazier*].

Id. at 3.

Debtor’s Reply (Dckt. 84) does not indicate whether they accept the above language of Creditor.

Debtor’s Reliance on Motion to Avoid Lien

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Kelstin Group, Inc., dba Pacific Credit Services ("Kelstin"). Debtor filed a Motion to Avoid Lien in connection with this claim on April 1, 2022 and it is set for hearing on May 10, 2022. See Dckt. 69. Trustee filed a Response indicating non-opposition on April 11, 2022. Dckt. 81.

Trustee notes that Debtor's Plan also relies on a Motion to Value Secured Claim and Avoid Lien in connection with Creditor First Trust's secured claim. Dckt. 78 at 2:1-2. Debtor has not filed such motion. If Debtor does not file such Motions and/or they are not granted, Debtor's Plan will be insufficient to pay Creditor's claim in full. *Id.* at 2:4-7. In Debtor's Reply, with respect to Creditor First Trust, Debtor "requests that the Motion to [be] continued [a]fter completion of [the BDR] process." Dckt. 84 at 1:24-26. The court is unsure what Motion Debtor is referring to, as Debtor has not filed any Motions in connection with Creditor's claim. Regardless, without the court valuing the claim(s) of Kelstin and First Trust, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

Debtor's Prosecution of Adversary Proceeding

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

Trustee states that it is unclear, based on the Amended Plan, whether Debtor intends to prosecute *First Trust v. Frazier*. Dckt. 78 at 2:16-18. Debtor's Plan states, "Debtor shall prosecute Adversary #22-020078[.]" Dckt. 50 at 7. The trustee is uncertain of treatment of Creditor's claim if the Plan is confirmed.

Similarly to the typographical error made by Creditor in its Objection, Debtor appears to have erred in providing the correct case number. The court finds that Debtor meant to state they intended to prosecute #22-02008.

Debtor's Reply states that Debtor and Creditor applied for Bankruptcy Dispute Resolution ("BDR") to resolve the claim without further litigation. Dckt. 84 at 2:3-5. In the event that the BDR is unsuccessful, Debtor intends to apply for permission to file a cross complaint against Creditor. *Id.* at 2:6-8.

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

Debtor Failed to File Schedules I/J

Trustee states Debtor's bankruptcy case was filed on November 9, 2021. Dckt. 78 at 2:19-20. Accordingly, Trustee is uncertain if Debtor's income and expenses have changes in the last five (5) months. *Id.* at 2:20-21. Debtor's Reply does not address this deficiency. Without Debtor's supplemental Schedules I/J, the court and Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325.

April 26, 2022 Hearing

At the hearing, Counsel for Debtor advised the court that Debtor and Creditor agreed to participate in the BDRP in an effort to resolve their disputes. All parties in interest at the hearing agreed to a continuance of this hearing to allow the BDRP mediation to proceed.

Motion to Avoid Lien

On April 1, 2022 Debtor filed a Motion to Avoid Lien of Kelstin. Dckt. 69. On May 15, 2022 an Order Granting Motion to Avoid Lien was entered. Dckt. 91. The Order states the judgment lien is avoided in its entirety pursuant 11 U.S.C. § 522(f)(1). This seems to resolve part of Trustee's opposition to the Motion to Confirm Amended Plan.

July 12, 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 Amended Chapter 13 Plan filed by the debtor, Dennis A. Frazier ("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
xxxxxxxxxx

14. [21-23841](#)-E-13 **DENNIS FRAZIER**
[22-2008](#) CAE-1

**CONTINUED STATUS CONFERENCE RE:
COMPLAINT
2-4-22 [1]**

FIRST TRUST V. FRAZIER

Plaintiff's Atty: Kirk Steven Rimmer
Defendant's Atty: Peter G. Macaluso

Adv. Filed: 2/4/22
Answer: 2/25/22
Reissued Summons: 3/14/22

Nature of Action:
Dischargeability - false pretenses, false representations, actual fraud
Declaratory judgment

Notes:
Continued from 5/4/22 to be heard in conjunction with the continued Motion to Confirm Plan.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on June 23, 2022. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

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

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

- A. Plan may not be feasible because: (1) Schedule I identifies Debtor as receiving \$1,840.00 as "Grandson's Help," however, at Debtor's First Meeting of Creditors, Debtor admitted the grandson only receives income in the amount of \$1,040.00; (2) Schedule J estimates Debtor's dependent grandson's expenses as a total of \$450.00, which appears low; and (3) Debtor has a potential elder abuse claim they failed to list on their schedules.
- B. The Plan contains conflicting reports of Debtor's Attorney fees.

DISCUSSION

Trustee's objections are well-taken.

Debtor 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).

Debtor purports to receive \$1,840.00 in monthly income from "Grandson's Help", for a total monthly income of \$2,900.31. Dckt. 1, Pages 25-26. The Debtor has failed to provide any Declaration or other evidence from grandson as proof that he can and will contribute any amount to the Debtor over the duration of the Plan. Additionally, Debtor admitted at the First Meeting of Creditors that the grandson only receives \$1,040.00 of disability social security per month. Also, Schedule J estimates Debtor's dependent grandson's expenses as a total of \$450.00, which, when considering the IRS National Standards for Allowable Living Expenses, is low.

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

Unreported Assets

Debtor has not listed an Elder Abuse claim on Schedule A/B despite admitting the existence of such a claim at the First Meeting of Creditors. Dckt. 1, Pages 11-17. Thus, the assets of the estate are not fully accounted for and the Plan may not be confirmed. The Plan, therefore, violates 11 U.S.C. § 1325(b)(1), which provides (emphasis added):

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.**

Conflicting Reports of Attorney Fees

Debtor may not be able to comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor's Plan states that Debtor's Attorney received \$1,500.00 prior to filing this case and \$1,500.00, will be paid through the Plan, for a total amount of \$3,000.00 being charged as a flat fee for attorney fees. Dckt. 3, Page 2. Debtor's Rights and Responsibilities, states that Debtor's Attorney agreed to attorney fees of \$4,000.00, and \$1,500.00 was paid prior to filing the case. Dckt. 6, Page 3. Disclosure of Compensation of Attorney for Debtor, identifies that the attorney fees are \$4,000.00 and \$1,500.00 was paid to attorney prior to filing and \$2,500.00 is to be paid through the Plan. Dckt. 1, Page 46. Because the Debtor's Attorney fees are inconsistent, the Plan may not be confirmed.

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

The court shall issue 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.

16. [19-20360-E-13](#) **KENNETH JOHNSON** **MOTION TO MODIFY PLAN**
[WW-3](#) **Mark Wolff** **5-31-22 [94]**

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 31, 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, Kenneth W Johnson (“Debtor”) seeks confirmation of the Third Modified Plan because Debtor fell behind on plan payments due to a loss of income resulting from military deployment and

loss of overtime income related to Covid-19. In addition, Debtor is being deployed from August 2022 through January 2023, further reducing Debtor's income. Declaration, Dckt. 96.

The Modified Plan provides all missed payments through and including April 25, 2022 are excused, total paid as of May 16, 2022 is \$146,427.00, payments of \$3,050.00 per month for 9 months, then \$4,700.00 for 12 months, and a 100 percent dividend to unsecured claims totaling \$11,970.00. Modified Plan, Dckt. 97. 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 28, 2022. Dckt. 101. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor is delinquent in Plan payments,
- B. Proposed Plan payments are insufficient to pay the claims.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is \$3,050.00 delinquent in plan payments, which represents one month of the \$3,883.58 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

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 69 months due to insufficient payment amount. Trustee calculates that the plan must increase by at least an additional \$693.55 to pay the set monthly payments as proposed. 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, Kenneth W Johnson ("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.

17. [20-24085-E-13](#) **GENEE FELTS-BOREN** **MOTION TO SELL**
[WW-2](#) **Mark Wolff** **6-15-22 [65]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 15, 2022. By the court’s calculation, 27 days’ notice was provided. 21 days’ notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days’ notice).

The Motion to Sell Property 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 Sell Property is granted.
--

The Bankruptcy Code permits Genée Nicole Felts-Boren, Chapter 13 Debtor, (“Movant”) to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the real property commonly known as 5324 Earle Court, Elk Grove , California 95757 (“Property”).

The proposed purchaser of the Property is Manuel Gomez and Heidi Gomez , and the terms of the sale are:

- A. Purchase Price: \$940,000.00.
- B. Close of Escrow: 45 days after acceptance.

- C. All liens and security interests encumbering the property will be paid in full before or simultaneous with the transfer of title and possession to the buyer.

DISCUSSION

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because it provides for the completion of the Chapter 13 Plan and will allow Debtor to purchase new housing in Texas where she currently resides.

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 Sell Property filed by Genee Nicole Felts-Boren, Chapter 13 Debtor, (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Genee Nicole Felts-Boren, Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Manuel Gomez and Heidi Gomez or nominee (“Buyer”), the Property commonly known as 5324 Earle Court, Elk Grove , California 95757 (“Property”), on the following terms:

- A. The Property shall be sold to Buyer for \$940,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 65, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.
- C. Chapter 13 Debtor is authorized to execute any and all documents reasonably necessary to effectuate the sale.

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 15, 2022. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

<p>The Motion to Employ is granted.</p>
--

Genee Nicole Felts-Boren ("Debtor") seeks to employ Cynthia A. Hextell and RE/Max Gold Natomas ("Real Estate Agent") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Debtor seeks the employment of Real Estate Agent to list and sell Debtor's real property commonly known as 5324 Earle Court, Elk Grove California 95757.

Debtor argues that Real Estate Agent's appointment and retention is necessary to list and sell Debtor's real property. Real Estate Agent seeks a 4.5% commission in connection with the sale and closing the of the property.

Cynthia A. Hextell, a real estate agent of RE/Max Gold Natomas, testifies that she is a licensed real estate agent and has entered into a residential listing agreement on behalf of RE/Max Gold Natomas with Genee Nicole Felts. Cynthia A. Hextell testifies she and RE/Max Gold Natomas do not represent or

hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

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

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

Taking into account all of the relevant factors in connection with the employment and compensation of Real Estate Agent, considering the declaration demonstrating that Real Estate Agent does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Cynthia A. Hextell as Real Estate Agent for the Chapter 13 Estate on the terms and conditions set forth in the Residential Listing Agreement filed as Exhibit A, Dckt.73. Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

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

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

The Motion to Employ filed by Genee Nicole Felts-Boren ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Employ is granted, and Debtor is authorized to employ Cynthia A. Hextell as Real Estate Agent for Debtor on the terms and conditions as set forth in the Residential Listing Agreement filed as Exhibit A, Dckt. 74.

IT IS FURTHER ORDERED that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.

IT IS FURTHER ORDERED that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.

IT IS FURTHER ORDERED that except as otherwise ordered by the Court, all funds received by counsel in connection with this matter, regardless of

whether they are denominated a retainer or are said to be nonrefundable, are deemed to be an advance payment of fees and to be property of the estate.

19. [22-21194](#)-E-13 SCOTTY BAILEY **OBJECTION TO CONFIRMATION OF**
[DPC-1](#) Mikalah Liviakis **PLAN BY DAVID P. CUSICK**
6-22-22 [\[19\]](#)

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on June 22, 2022. By the court’s calculation, 20 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 has failed to file tax returns for all four (4) years prior to filing bankruptcy.

DISCUSSION

Trustee’s objections are well-taken.

Failure to File Tax Returns

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

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on May 25, 2022. By the court's calculation, 48 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

<p>The Motion to Confirm the Amended Plan is XXXXXXX .</p>
--

The debtor, Nicole Celeste Dias ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for \$454.00 in monthly Plan payments for 48 months and a 100 percent dividend for unsecured claims totaling \$12,118.11. 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 23, 2022. Dckt. 31. Trustee opposes confirmation of the Plan on the basis that:

- A. Trustee states Debtor's Plan does not appear to be in good faith due to the extent of preferential treatment between creditors under the non-standard provisions. However, Trustee states this may be resolved if the language of the non-standard provisions is stricken in the Order.

Debtor's Response

Debtor's response, filed June 30, 2022 states the Debtor has filed Exhibit A, Dckt. 35, which is a proposed Order Confirming Plan, providing the language in the non-standard provisions regarding the payment of community debts outside the Plan shall be stricken.

Improper Plan Terms

The proposed Chapter 13 Plan was filed, with Debtor and Debtor's counsel making the certifications as required by Federal Rule of Bankruptcy Procedure 9011. One such certification is that what is submitted complies with the law.

On its face, the proposed Plan appears to seek to divert property of the Estate, the community property post-petition earnings of the non-debtor Spouse to Special, Favored, Creditors of the non-debtor Spouse. It is unclear how, if all of Debtor's projected disposable income is funding the Plan, how there could be such "Extra" monies at the disposal of the non-debtor Spouse to pay her Favored Creditors.

This appears to resolve Trustee's concerns. At the hearing, ~~XXXXXXXXXXXX~~

~~————— 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, Nicole Celeste Dias ("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 25, 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.~~

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 June 7, 2022. By the court’s calculation, 35 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.

<p>The Motion to Incur Debt is xxxxxxx .</p>
--

Andre Saint-Louis (“Debtor”) seeks permission to refinance their primary residence commonly known as 154 Bel Air Drive, Vacaville, California 95687. Debtor seeks to pull out \$10,991.00 in order to repair a leaking pipe and damages ceiling in their house. The refinance would increase the monthly payment from \$1,777.84 to \$1,841.00, with a total refinance price of \$305,000.00 to Federal Savings Bank over 30 years and a 4.75% fixed interest rate.

Trustee’s Opposition

Trustee filed an Opposition on June 17, 2022. Dckt. 62. Trustee opposes Motion to Incur Debt on the basis that:

- A. Trustee cannot assess the debt without an Estimated Settlement Statement;
- B. Trustee cannot assess the need of the debt without evidence of the declared ceiling damages and the estimated cost of repair; and
- C. Trustee states an explanation is needed as to why the Debtor believes all Plan payments are completed as stated in Debtor’s Declaration. Dckt. 59.

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).

Best Interest of Debtor

Here, it is not clear to the court whether the transaction is in the best interest of Debtor. Debtor has not provided evidence of the necessary repairs needed to their home. Without this evidence, the court does not know whether increasing the principal balance by \$10,991.00 is justified.

The evidence of Debtor needing to pull \$10,991.00 out in cash and taking on more debt is that it will cost \$11,000 to repair a leaking pipe and the related repair. No description of the manager and the contractor’s estimate of the actual repair costs are provided.

~~————— The Motion is denied.~~

~~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 Andre Saint-Louis (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~————— **IT IS ORDERED** that the Motion is denied, and Andre Saint-Louis is not authorized to incur debt pursuant to the terms of the agreement.~~

FINAL RULINGS

22. [19-27920-E-13](#) **MICHAEL MULLINS** **MOTION FOR COMPENSATION FOR**
[PGM-2](#) **Peter Macaluso** **PETER G. MACALUSO, DEBTORS**
 ATTORNEY(S)
 6-7-22 [75]

Final Ruling: No appearance at the July 12, 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 Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 7, 2022. By the court’s calculation, 35 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days’ notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days’ notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.
--

Peter G. Macaluso, the Attorney (“Applicant”) for Michael Roy Mullins, the Chapter 13 Debtor (“Client”), makes a Request for the Additional Allowance of Fees and Expenses in this case.

Fees are requested for the period January 1, 2022, through April 6, 2022. Applicant requests fees in the amount of \$1,500.00 and costs in the amount of \$0.00.

TRUSTEE’S NONOPPOSITION

On June 15, 2022, Chapter 13 Trustee David P. Cusick filed a nonopposition stating they do not oppose the motion, however, Debtor’s attorney does not include a Billing Statement, only information incorporated in the Motion.

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 Brunswick 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 modifying the Chapter 13 Plan and extending it out to eighty-four (84) months pursuant to 11 U.S.C. § 1329(d)(1) (the “CARES Act”), and responding to a Motion 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. 74. 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)).

No Raw Billing Records

This court finds helpful, and in most cases essential, for professionals to provide a basic task billing analysis for the services provided and fees charged. This has long been required by the Office of the U.S. Trustee, and it is nothing new for professionals in this District. The task billing analysis requires only that the professional organize his or her task billing. The simpler the services provided, the easier it is for Applicant to quickly state the tasks. The more complicated and difficult to discern the tasks from the raw billing records, the more evident it is for Applicant to create the task billing analysis to provide the court, creditors, and U.S. Trustee with fair and proper disclosure of the services provided and fees being requested.

Additionally, the court finds it necessary for attorneys to provide their time and billing records so the court can see what legal services are asserted to be recoverable.. Absent these records, the court has no ability to confirm whether the limited task billing provided is true, correct, reasonable, and awardable.

Applicant has chosen to not present the court with the necessary evidence for the court to make an informed, intelligent, proper award of attorney’s fees and costs. However, Applicant has provided the court a table in their Motion which the court presumes to be extracted from Applicant’s raw time and billing records. Given the minimal and reasonable amount of fees requested, the court will allow the table to constitute sufficient evidence of Applicant’s fees and services.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Motion to Modify: Applicant spent approximately 5.25 hours in this category. Applicant planned, filed, and appeared at hearings for a Motion to Modify the Chapter 13 Plan.

Motion to Dismiss: Applicant spent approximately 1.30 hours in this category. Applicant appeared at hearings for a Motion to Dismiss filed against the Chapter 13 Plan.

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	6.55	\$300.00	\$1,965.00
Total Fees for Period of Application			\$1,965.00

However, Applicant requests that the fees awarded be reduced to \$1,500.00, for only five (5) hours of work. Dckt. 75.

FEES AND COSTS & EXPENSES ALLOWED

Fees

The unique facts surrounding the case, including planning, filing, and defending against dismissal a Motion to Modify, 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 \$1,500.00 is approved pursuant to 11 U.S.C. § 330 and authorized to be paid by David Cusick (“the Chapter 13 Trustee”) from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

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

Fees	\$1,500.00
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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 Michael Roy Mullins (“Debtor”)

Fees in the amount of \$1,500.00

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

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

23. <u>22-21130-E-13</u> <u>DPC-1</u>	RICHARD FONBUENA Thomas Amberg	OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 6-15-22 <u>[22]</u>
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23 thru 24

Final Ruling: No appearance at the July 12, 2022 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, and Office of the United States Trustee on June 15, 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.

The hearing on the Objection to Confirmation of Plan is continued to 2:00 p.m. on August 16, 2022, to be conducted in conjunction with Debtor’s Objection to the claim of VieBella, LLC and Hercules Fitness, Inc.

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

- A. Debtor underestimated the amount of unsecured claims and thus, his plan proposing a 100% dividend will not complete in sixty months.

DEBTOR’S RESPONSE

Debtor filed a response on June 28, 2022 stating they will be filing an objection to Proof of Claim 101 by Viabella, LLC and Hercules Fitness, LLC. Debtor would like the hearing on this objection continued to the hearing on the objections to claims. Upon review of the docket, no objections to claims have been filed yet.

DISCUSSION

Trustee’s objections are well-taken.

Plan Term is Greater Than 60 months

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to Trustee, the Plan will complete in more than sixty months due to underestimating the unsecured claims by roughly \$200,000. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

In light of the pending Objection to Claim, the court continues the hearing on this Objection to Confirmation to be conducted in conjunction with the Objection to Claim.

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 hearing on the Objection to Confirmation of Plan is continued to **2:00 p.m. on August 16, 2022**, to be conducted in conjunction with Debtor's Objection to the claim of VieBella, LLC and Hercules Fitness, Inc..

Final Ruling: No appearance at the July 12, 2022 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on May 27, 2022. By the court's calculation, 46 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan having been dismissed without prejudice (Order, Dckt. 34), and **the Matter is removed from the Calendar.**

25. [22-21036-E-13](#) PAUL/PATIENCE LUIZ **OBJECTION TO CONFIRMATION OF**
[DPC-1](#) Patricia Wilson **PLAN BY DAVID P. CUSICK**
6-22-22 [38]
25 thru 26

Final Ruling: No appearance at the July 12, 2022 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on June 22, 2022. By the court’s calculation, 20 days’ notice was provided. 14 days’ notice is required.

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

The Objection to Confirmation of Plan is dismissed without prejudice, the court having entered an Order (Dckt. 43) dismissing this case.

The Chapter 13 Trustee, David Cusick (“Trustee”) opposes confirmation of the Plan proposed by Debtor. The court entered an order dismissing this case, rendering Trustee’s Objection moot.

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, the Court having entered an Order (Dckt. 43) dismissing this case, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of the Plan is dismissed without prejudice, having been rendered moot by the dismissal of this case.

26. [22-21036-E-13](#) PAUL/PATIENCE LUIZ **OBJECTION TO CONFIRMATION OF**
[JHK-1](#) Patricia Wilson **PLAN BY FORD MOTOR CREDIT**
COMPANY LLC

Final Ruling: No appearance at the July 12, 2022 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on June 14, 2022. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is dismissed without prejudice, the court having entered an Order (Dckt. 43) dismissing this case.

Ford Motor Credit Company LLC ("Creditor") opposes confirmation of the Plan proposed by Debtor. The court entered an order dismissing this case, rendering Creditor's Objection moot.

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 Ford Motor Credit Company LLC ("Creditor") holding a secured claim having been presented to the court, the Court having entered an Order (Dckt. 43) dismissing this case, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of the Plan is dismissed without prejudice, having been rendered moot by the dismissal of this case.

Final Ruling: No appearance at the July 12, 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 31, 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 Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

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

The debtor, Margo Karen Shugart-Young (“Debtor”) seeks confirmation of the Modified Plan because there have been changes in Debtor’s income and expenses since the last updated budget on December 7, 2020. Declaration, Dckt. 63. The Modified Plan provides for \$31,085.00 to be paid through month 31, \$784.00 per month to be paid through months 32-60, a 19.41 percent dividend to unsecured claims totaling \$100,318.91, and \$0.00 per month to Nissan Motor Acceptance Corp as the claim has been paid in full. Modified Plan, Dckt. 65. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE’S NON-OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”) filed an Non-Opposition on June 28, 2022. Dckt. 70. Trustee does not oppose confirmation of the Plan.

DISCUSSION

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

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Margo Karen Shugart-Young (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor’s Modified Chapter 13 Plan filed on May 31, 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.

Final Ruling: No appearance at the July 12, 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, parties requesting special notice, and Office of the United States Trustee on June 1, 2022. By the court’s calculation, 41 days’ notice was provided. 28 days’ notice is required.

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

The Motion to Substitute is granted.

Joint Debtor, Brandy Michelle Boberg (“Joint Debtor”), seeks an order approving the motion to substitute Joint Debtor for the deceased Debtor, Joseph Edward Boberg (“deceased Debtor”), (collectively, “Debtors”). This motion is being filed pursuant to Federal Rule of Bankruptcy Procedure 1016.

Debtors filed for relief under Chapter 13 on March 18, 2020. On June 2, 2020, Debtors’ Chapter 13 Plan was confirmed. Dckt. 24. On September 7, 2021, deceased Debtor Joseph Edward Boberg passed away. Joint Debtor asserts that she is the lawful successor and representative of deceased Debtor.

Pursuant to Federal Rule of Bankruptcy Procedure 1016 and Local Bankruptcy Rule 1016-1(b), Joint Debtor requests authorization to be substituted in for the deceased Debtor and to perform the obligations and duties of the deceased party in addition to performing her own obligations and duties. A Suggestion of Death was filed on June 1, 2022. Dckt. 30. Joint Debtor is the wife of the deceased Debtor and is the successor’s heir and lawful representative. Joint Debtor states that she will continue to prosecute this case in a timely and reasonable manner.

TRUSTEE'S NON-OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on June 28, 2022. Dckt. 35.

DISCUSSION

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

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

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

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

The motion for substitution must be made not later than 90 days following the service of the suggestion of death. Until the suggestion is served and filed, the 90 day period does not begin to run. In the absence of making the motion for substitution within that 90 day period, paragraph (1) of subdivision (a) requires the action to be dismissed as to the deceased party. However, the 90 day period is subject to enlargement by the court pursuant to the provisions of Bankruptcy Rule 9006(b). Bankruptcy Rule 9006(b) does not incorporate by reference Civil Rule 6(b) but rather speaks in terms of the bankruptcy rules and the bankruptcy case context. Since Rule 7025 is not one of the rules which is excepted from the provisions of Rule 9006(b), the court has discretion to enlarge the time which is set forth in Rule 25(a)(1) and which is incorporated in adversary proceedings by Bankruptcy Rule 7025. Under the terms of Rule 9006(b), a motion made after the 90 day period must be denied unless the movant can show that the failure to move within

that time was the result of excusable neglect. The suggestion of the fact of death, while it begins the 90 day period running, is not a prerequisite to the filing of a motion for substitution. The motion for substitution can be made by a party or by a successor at any time before the statement of fact of death is suggested on the record. **However, the court may not act upon the motion until a suggestion of death is actually served and filed.**

The motion for substitution together with notice of the hearing is to be served on the parties in accordance with Bankruptcy Rule 7005 and upon persons not parties in accordance with Bankruptcy Rule 7004

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

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

Here, Joint Debtor has provided sufficient evidence to show that administration of the Chapter 13 case is possible and in the best interest of creditors after the passing of the debtor. The Motion was filed within the ninety-day period specified in Federal Rule of Bankruptcy Procedure 1016, following the filing of the Suggestion of Death. Dckt. 30. 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 Joint Debtor, Brandy Michelle Boberg, as the wife of the deceased party and as the successor’s heir and lawful representative, may continue to administer the case on behalf of the deceased Debtor, Joseph Edward Boberg. 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 Joint Debtor, Brandy Michelle Boberg, 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 Brandy Michelle Boberg is substituted as the successor-in-interest to Joseph Edward Boberg and is allowed to continue the administration of this Chapter 13 case pursuant to Federal Rule of Bankruptcy Procedure 1016.

Final Ruling: No appearance at the July 12, 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, parties requesting special notice, and Office of the United States Trustee on June 2, 2022. By the court’s calculation, 40 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days’ notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days’ notice for written opposition).

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

<p>The Motion for Allowance of Professional Fees is granted.</p>

Mikalah R. Liviakis, the Attorney (“Applicant”) for Daniel Scott Schweitzer, the Chapter 13 Debtor (“Client”), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period March 24, 2012, through June 1, 2012. The order of the court approving substitution of Applicant as Client’s attorney was entered on April 14, 2012. Dckt. 71. Applicant requests fees in the amount of \$3,160.00 and costs in the amount of \$0.00.

APPLICABLE LAW

Reasonable Fees

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

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

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

- (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
- (b) To what extent will the estate suffer if the services are not rendered?

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

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

A review of the application shows that Applicant's services for the Estate include case administration, fee applications, chapter 13 Plan review, and asset disposition. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 0.6 hours in this category. Services included a motion for substitution and disclosure of compensation.

Fee Applications: Applicant spent 1.5 hours in this category. Services include one application for compensation.

Chapter 13 Plan Review: Applicant spent 0.5 hours in this category. Services include reviewing Debtor's Plan and Schedules.

Asset Disposition: Applicant spent 5.4 hours in this category. Services include drafting a motion to sell Debtor's Property and motion to employ Debtor's realtor and working with the parties to facilitate the sale.

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
Mikalah R. Liviakis, Esq.	8	\$395.00	<u>\$3,160.00</u>
Total Fees for Period of Application			\$3,160.00

FEES ALLOWED

Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$3,160.00 are approved

pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 case.

The court authorizes the Chapter 13 Trustee to pay 100% of the fees 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	\$3,160.00
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pursuant to this Application as final fees and costs pursuant to 11 U.S.C. § 330 in this case.

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

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

The Motion for Allowance of Fees and Expenses filed by Mikalah R. Liviakis (“Applicant”), Attorney for Daniel Scott Schweitzer, Chapter 13 Debtor (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Mikalah R. Liviakis is allowed the following fees and expenses as a professional of the Estate:

Mikalah R. Liviakis , Professional employed by the Chapter 13 Trustee

Fees in the amount of \$3,160.00

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

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

Final Ruling: No appearance at the July 12, 2022 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, and Debtor’s Attorney on June 21, 2022. By the court’s calculation, 21 days’ notice was provided. 14 days’ notice is required.

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

The hearing on the Objection to Confirmation of Plan is continued to 2:00 p.m. on August 2, 2022, to allow the Chapter 13 Trustee to conduct the continued First Meeting of Creditors.

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

A. Debtor failed to appear at the first meeting of creditors.

DISCUSSION

Creditor’s objections are well-taken.

Failure to Appear at 341 Meeting

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

The continued meeting is set for July 14, 2022.

The court continues the hearing on the Objection to 2:00 p.m. on August 2, 2022.

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 hearing on the Objection to Confirmation of Plan is continued to **2:00 p.m. on August 2, 2022**, to allow the Chapter 13 Trustee to conduct the continued First Meeting of Creditors.