

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

July 14, 2020 at 3:00 p.m.

1.	<u>19-27100-E-13</u> <u>MAC-1</u>	JOJO/MARIAFE GUINTU Marc Caraska	MOTION TO CONFIRM PLAN 5-22-20 [31]
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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 22, 2020. By the court's calculation, 53 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.
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The debtors, Jojo Montana Guintu and Mariafe Holliday Guintu ("Debtor"), seek confirmation of the Amended Plan. The Amended Plan provides for monthly plan payments of \$1,070.00 for sixty (60) months and a 7% dividend to unsecured claims totaling \$61,926.22. Amended Plan, Dckt. 34. 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 30, 2020. Dckt. 36. Trustee opposes confirmation of the Plan on the basis that Debtor is delinquent in plan payments.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is \$1,070.00 delinquent in plan payments, which represents one month of the \$1,070.00 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. According to Trustee, Debtor has paid \$6,420.00 into the Plan to date. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

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

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtors, Jojo Montana Guintu and Mariafe Holliday Guintu ("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.

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 February 29, 2020. By the court's calculation, 59 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The hearing on the Motion to Confirm the Modified Plan is continued to 2:00 p.m. on XXXXXXXXXX, 2020.

June 30, 2020 Status Report

Debtors filed another Status Report stating that their application for a reverse mortgage requires a counseling session, which was not scheduled for several weeks due to staffing reductions resulting from the COVID-19 pandemic. Dckt. 128. Debtors have been waiting for the loan approval, but were informed on June 29, 2020 that the lender wants more information, including a copy of their Chapter 13 petition, plan, and a payment history from the Trustee. *Id.* Due to the COVID-19 related delays, Debtors are considering but hope they will not have to modify their plan to extend beyond the 60 months as provided by the CARES Act. *Id.* Debtors do not want to risk a dismissal after having been in their plan for five (5) years with over \$125,000.00 in plan payments. *Id.*

The hearing on the Motion is further continued.

May 26, 2020 Status Report

Debtors filed a Status Report stating that they have applied for a reverse mortgage, have obtained

their certificate of eligibility for it, and the residence was inspected by an appraiser on May 12, 2020. Dckt. 123. However, Debtors are still waiting for the loan process to be completed and, as of yet, there is no loan approval. *Id.*

Continuance of April 28, 2020 Hearing

Considering the time this case has been pending, the issues relating to the Motion, and the impact of the COVID-19 restrictions on the ability to do business, the hearing is continued. If Debtor is able to obtain the reverse mortgage commitment or otherwise resolve the Trustee's opposition, the Parties may file a supplemental pleading stating the Trustee's withdrawal of opposition and any amended or additional terms to be stated in the order confirming the Plan. The Trustee shall lodge a proposed order granting this Motion, including any of the additional provisions to be included in the confirmation order.

REVIEW OF MOTION

The debtors, Richard Jay Cummings and Paula Rae Cummings ("Debtors") seek confirmation of the Modified Plan to address the deficiencies that led to Trustee's Motion to Dismiss due to Debtor Richard's retirement, and now his sole source of income is Social Security in the amount of \$2,096.00 per month after retirement funds have been exhausted. Declaration, Dckt. 109. The Modified Plan provides \$2,417.00 per month for 52 months, \$1,679.00 per month for 7 months, and \$28,102.00 per month for 1 month, and a 0% percent dividend to unsecured claims totaling \$190,932.00. Modified Plan, Dckt. 108. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response on March 30, 2020. Dckt. 116. Trustee requests that the court take the following into consideration:

- A. The Plan is dependent on the Debtors' obtaining a reverse mortgage on their property. However, Debtors failed to indicate when or with whom they are applying for this reverse mortgage.

DISCUSSION

Debtors filed a Reply to Trustee's Response indicating that they have applied for the reverse mortgage with Mortgage Marketing Masters. The process was delayed due to COVID-19 taking them three weeks to complete the required counseling session but have obtained their certificate of eligibility. The information is now with the mortgage company which is waiting on the finance company.

However, Debtors do not yet have loan approval or a closing date at this time. Debtors requests for the motion to modify be granted or, in the alternative, that the hearing on the motion be continued to allow Debtors to update the court as to the status of the application.

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

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

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

IT IS ORDERED that the hearing on the Motion to Confirm the Modified Plan is continued to 2:00 p.m. on **XXXXXXXXXX**, 2020.

3. [20-22504](#)-E-13 **ERIC/SHERI DICKSON**
3 thru 4 **Matthew Gilbert**

**OBJECTION TO CONFIRMATION OF
PLAN BY CREDITOR WELLS FARGO
BANK, N.A.
6-18-20 [13]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on June 18, 2020. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.
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Wells Fargo Bank, N.A. ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that Debtor's Plan improperly modifies Creditor's secured claim.

DEBTOR'S REPLY

Debtor filed a Reply on June 30, 2020. Dckt. 21. Debtor agrees that Creditor's secured claim, which Debtor inadvertently placed as a Class 2(B) claim, should be treated as a Class 2(A) claim. Debtor will file a new plan prior to the hearing date.

DISCUSSION

Creditor's objections are well-taken.

Improper Reduction of a Secured Claim

Creditor alleges that the Plan violates 11 U.S.C. § 1325(a)(9) because it improperly reduces the Creditor's secured claim. Section 1325(a)(9) specifically provides that:

For the purpose of paragraph [1325(a)](5), section 506 shall not apply to a claim described in that paragraph if the creditor has a purchase money security interest securing the debt that is the subject of the claim, **the debt was incurred within the 910-day period** preceding the date of the filing of the petition, and the collateral for the debt consists of a motor vehicle (as defined in section 30102 of title 49) acquired for the personal use of the debtor, or if collateral for the debt consists of any other thing of value, if the debt was incurred during the 1-year period preceding that filing.

Section 1325(a)(9). Emphasis added.

On February 2, 2018, Debtor executed a purchase money loan for a 2011 Honda Odyssey V6 ("Vehicle"). Exhibit A, Dckt. 15. The lien on the Vehicle's title secures a debt owed to Creditor with a balance of approximately \$5,923.38. Proof of Claim, No. 1. Debtor's Plan classifies Creditor's secured claim as a Class 2(B) claim with a value of \$4,675.00. Plan, Dckt. 2. Class 2(B) claims are reduced based on the value of collateral, but Creditor's secured claim cannot be reduced by the value of the Vehicle pursuant to 11 U.S.C. § 1325(a)(9). Debtor and Creditor executed the loan within 910 days of the petition date. Additionally, the collateral is a motor vehicle acquired for personal use as Debtor's Plan and Schedules do not indicate otherwise. Thus, Creditor's claim should be listed as a Class 2(A) claim to reflect that it is not reduced based on the value of the Vehicle.

Debtor has acknowledged the error in classification and states they will be filing a new plan to address this issue.

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

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

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

The Objection to the Chapter 13 Plan filed by Wells Fargo Bank, N.A. ("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.

4. [20-22504-E-13](#) **ERIC/SHERI DICKSON** **OBJECTION TO CONFIRMATION OF**
[DPC-1](#) **Matthew Gilbert** **PLAN BY DAVID P. CUSICK**
6-23-20 [\[17\]](#)

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on June 23, 2020. 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. At the hearing -----.

The Objection to Confirmation of Plan is sustained.
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The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that:

- A. Debtor's Plan fails the liquidation analysis.
- B. Debtor's Plan improperly reduces the secured claim of a creditor.

DEBTOR'S REPLY

Debtor filed a Reply on June 30, 2020. Dckt. 21. Debtor agrees that the secured claim of Wells

Fargo Bank, which Debtor inadvertently placed as a Class 2(B) should be treated as a Class 2(A) claim. Debtor will file a new plan prior to the hearing date.

However, Debtor states that Trustee's liquidation analysis only asserts that the non-exempt equity in Debtor's schedules amounts to \$69,957.00, which is greater than the proposed payment to unsecured claims. Debtor contends that Trustee fails to address the costs associated with a liquidation of Debtor's assets, including the Chapter 7 trustee administrative fees and the simple realtor fees in liquidating Debtor's non-exempt residence.

DISCUSSION

Trustee's objections are well-taken.

Improper Reduction of a Secured Claim

Trustee notes that Wells Fargo Bank ("Creditor") objects the Plan on the basis that it violates 11 U.S.C. § 1325(a)(9) because it improperly reduces the Creditor's secured claim. The debt was incurred within 910 days of the petition date. Additionally, the collateral is a motor vehicle acquired for personal use as Debtor's Plan and Schedules do not indicate otherwise. Thus, Creditor's claim should be listed as a Class 2(A) claim to reflect that it is not reduced based on the value of the Vehicle. Creditor's Objection is set for hearing on the same date as the instant objection. Debtor's proposed Plan has been denied confirmation on these grounds.

Debtor Fails Liquidation Analysis

Debtor's plan fails the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Trustee states that Debtor's Plan proposes to pay no less than a 12% dividend to unsecured claims, an approximate dividend of \$45,305.67. However, Debtor's non-exempt equity totals \$69,957.00 based on property listed in Debtor's Schedules, including:

- A. 2009 Nash 21R 5th Wheel Trailer (\$1,532.00),
- B. Camping Gear (\$1,100.00),
- C. Firearms (\$150.00),
- D. Dog (\$40.00),
- E. Bank Account (\$65.00),
- F. Tax Refunds (\$10,500.00), and
- G. Real property located at 8137 Glen Creek Way, Citrus Heights, California (\$56,757.00).

See Schedules A/B and C. Dckt 1.

While the Debtor argues that the Trustee does not account for costs of reducing some of the assets to dollars, the Debtor does not provide the court with any schedule or evidence of what such costs

would be. Debtor appears to argue that such costs would be \$25,000 (\$69,957 gross value and \$45,205 to be paid under the Plan), which would be 35.7%. The court sees no basis for such a gross costs of liquidation, given that \$10,565 of it is cash (including the tax refund) and \$56,757 would be from the sale of real property, for which there would be roughly 8% cost of sale.

The court notes that Debtor has already stated that he will be filing a new plan to address the objections of a creditor.

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

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

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

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, 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, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 5, 2020. By the court’s calculation, 39 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

<p>The Motion to Confirm the Modified Plan is denied.</p>
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The debtor, Christa Lynne Hylen (“Debtor”) seeks confirmation of the Modified Plan to make up for missed payments due to Debtor and Debtor’s spouse both being laid off during the COVID-19 pandemic. Declaration, Dckt. 141. The Modified Plan provides:

- A. Monthly plan payments of \$100.00 for four (4) months beginning June 25, 2020,
- B. followed by monthly plan payments of \$665.00 for sixty-three (63) months, and
- C. a 0% dividend to unsecured claims totaling \$56,822.00.

Modified Plan, Dckt. 142. 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 24, 2020. Dckt.

146. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor will not be able to comply with plan.
- B. Debtor fails to provide her best effort.
- C. Debtor's Plan is infeasible as it does not comply with plan provisions.

DISCUSSION

Cannot Comply with Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Trustee has filed and set three (3) previous Motions to Dismiss for delinquent payments. Dckts. 16, 82, 135. Each time, Debtor's response has been to file a modified plan to cure the delinquency. Since the case was filed on November 30, 2018 to May 31, 2020, Debtor has made four (4) payments totaling \$2,672.00, but eighteen (18) payments have been due for this duration. Moreover, Debtor has not filed a supplement to Schedule I or J or any supporting documents such as pay advices in support of these Motions to Confirm. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Not Best Effort

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

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

Debtor's Plan proposes monthly plan payments of \$100.00 for four (4) months followed by monthly plan payments of \$665.00 in October 2020. Debtor states she is able to pay \$728.96 per month. Declaration, Dckt. 141. However, Debtor's monthly income has increased by \$1,582.85 from her Schedule I filed on December 31, 2019. Debtor's expenses have increased by \$710.00 without explanation. Debtor also states that her average monthly income is \$3,839.96 and her spouse is receiving \$2,400.00. *Id.*

Infeasible Plan

Trustee alleges that the Plan does not comply with § 5.02(a) of the Plan. *See* 11 U.S.C. § 1325(a)(1). The four proposed payments of \$100.00 running from June 20, 2020 to September 20, 2020 are insufficient to pay even the \$654.71 monthly contract installment on the Class 2 claim. Additionally, the proposed \$100.00 monthly payments running from June 20, 2020 to September 20, 2020 are insufficient to pay Trustee's fees (approximately \$728.00). Thus, the Plan may not be confirmed.

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

confirmed.

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

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

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

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

6.	<u>20-21908</u> -E-13 <u>DPC-1</u>	MILTON PEREZ Mary Ellen Terranella	CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 5-18-20 [13]
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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, 2020. By the court’s calculation, 22 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.

<p>The Objection to Confirmation of Plan is sustained and the Plan is not confirmed.</p>

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

- A. Debtor has failed to file tax return.
- B. Debtor has failed to provide tax return.

- C. Debtor will not be able to make monthly plan payments.

DISCUSSION

Trustee's objections are well-taken.

Failure to File Tax Returns

According to the Internal Revenue Service Proof of Claim filed on May 13, 2020, Debtor failed to file the federal income tax return for the 2017 tax year. Filing of the return is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Failure to Provide Tax Returns

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

Failure to 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).

Debtor has a decrease in income and additional expenses due to the COVID-19 pandemic based on Debtor's admissions at the Meeting of Creditors on May 14, 2020:

- A. Debtor's other monthly income from rent received from his two boarders has decreased from \$450.00 to \$225.00 as one of his boarders is now unemployed. *See* Schedule I, Dckt. 1.
- B. Debtor's expenses now include expenses of his thirty-three year old cousin, who is listed as a dependent, lives with him, and is now unemployed. *See* Schedule J, Dckt. 1.
- C. Debtor's transportation expense of \$820.00 has increased as he is now driving into work instead of car pooling. *Id.*

Furthermore, Debtor's Plan and Schedule F fail to provide for the LVNV Funding, LLC claim. *See* Schedule F, Dckt. 1. Creditor filed a Proof of Claim on April 13, 2020 in the amount of \$2,210.73 (\$365.00 secured, \$1,845.73 unsecured). Proof of Claim 7. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Trustee's Meeting of Creditors Report

Trustee reports that Debtor failed to appear but that his counsel appeared at the Meeting of Creditors held on June 18, 2020. Trustee's June 18, 2020 Docket Entry Statement. The Meeting was concluded as to Debtor. *Id.*

Notice of Intent to Close Case

On June 29, 2020, a Notice of Intent to close Debtor's case without entry of discharge due to failure to file the required Financial Management Course Certificate was filed. Dckt. 21.

Objection Sustained

Though continued, Debtor has not been able to prosecute this Plan. He has not been able to attend the Meeting of Creditors. Further continuance of the hearing on Objection will not be of benefit in this case.

The Debtor appears to need a "reset" in this case by proposing a Chapter 13 Plan debtor can perform, fulfill his obligations for the prosecution of this case, and otherwise move forward seeking the extraordinary benefits available under the Bankruptcy Code.

The Objection is sustained and the Plan is not confirmed.

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

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

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

IT IS ORDERED that the Objection is sustained and the 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 Chapter 13 Trustee, creditors, and Office of the United States Trustee on May 20, 2020. By the court's calculation, 55 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

The debtor, Timothy Tobias Trocke ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly plan payments of \$2,705.00 for sixty (60) months and a 100% dividend to unsecured claims totaling \$0.00. Amended Plan, Dckt. 30. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CREDITOR'S OPPOSITION

Roger Anderson, trustee of the RWA Trust ("Creditor"), holding a secured claim filed an Opposition on June 4, 2020. Dckt. 40. Creditor opposes confirmation of the Plan on the basis that:

- A. Debtor's Plan improperly modifies an obligation secured by Debtor's principal residence.
- B. Debtor's Plan is infeasible because it fails to provide for a secured claim in full.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on June 16, 2020. Dckt. 48. Trustee opposes confirmation of the Plan on the basis that Debtor will not be able to afford the direct monthly payments of \$725.32 to Toyota Financial Services ("Toyota").

DISCUSSION

Modification of an Obligation Secured Only by Principal Residence

Creditor argues that Debtor's Plan was not filed in good faith and is an improper modification of a claim secured only by a security interest in real property that is Debtor's principal residence. Creditor has filed a Proof of Claim indicating a secured claim in the amount of \$126,635.02, plus 18% interest, secured by a first deed of trust against the property commonly known as 1671 Rosalind Street, Sacramento, California. Debtor's Schedules indicate that this is Debtor's primary residence. This modification violates 11 U.S.C. § 1322(b)(2), which prohibits the modification of an obligation secured only by Debtor's residence.

Infeasible Plan

Creditor alleges that the Plan is not feasible pursuant to 11 U.S.C. § 1325(a)(6), as it does not provide for Creditor's secured claim in full. The Plan provides for Creditor's claim of \$126,635.02, plus 4% interest. However, Creditor holds a claim in the amount of \$126,635.02, plus 18% interest. Thus, the Plan may not be confirmed.

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). Toyota's claim is classified as a Class 4 claim that matures after the completion of the Plan. Dckt. 30. Debtor's Plan is a 100% plan that spans for sixty (60) months. *Id.* However, these payments to Creditor are not listed as an expense in Debtor's Schedule J. *See* Dckt. 1. Toyota filed a Proof of Claim on May 8, 2020, noting that the obligation was incurred on March 6, 2019 and payments began on April 22, 2019 for 60 months. As such, Toyota's claim matures during the life of the Plan.

Additionally, Trustee points out that Debtor was a co-buyer with Penelope Mac Trocke. Proof of Claim, No. 3. Schedule I lists Ms. Trocke as Debtor's sister who contributes \$1,249.00 to household expenses. Dckt. 34. Trustee believes that Debtor's sister may be paying Creditor as opposed to Debtor, but the Declaration of Penelope Mac Trocke does not state this. *See* Declaration, Dckt. 38.

Debtor's sister filed a supplemental declaration on June 19, 2020 stating that Debtor served as co-buyer only for financial purposes, and that she is the one who has been and will continue to be making the Toyota payment. Dckt. 51.

Though the issue of who will be making the payment for the car loan is addressed, the failure to provide for the Class 1 Claim of Creditor has not.

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

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Timothy Tobias Trocke (“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 and Debtor's Attorney on June 22, 2020. By the court's calculation, 22 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"), filed this Objection to Confirmation of Plan on June 22, 2020, which is two business days beyond the seven-day deadline. 11 U.S.C. § 341(a) requires an objection and a notice of hearing be filed and served upon the debtor, the debtor's attorney, and the trustee within seven (7) days after the first date set for the meeting of creditors. Trustee asks the court to consider the Objection because the Objection is based on issues that are not discretionary under U.S.C. §1325(b) and cannot be presumed as such under U.S.C. §1325(a)(3).

DECLARATION OF TRUSTEE'S ATTORNEY

The Attorney for Trustee, Neil Enmark ("Trustee's Attorney") filed a Declaration in support of Trustee's Objection on June 22, 2020. Dckt. 20. Trustee's Attorney states that he overlooked Trustee's Objection as it was in the same email with another objection even though this instant objection was prepared to be filed and served on June 17, 2020. *Id.* Since COVID-19, Trustee staff at remote locations do not efile pleadings on behalf of Trustee's Attorney. *Id.* Trustee's Attorney has since changed his procedures to avoid such errors by creating a list of pleadings to be filed as a checklist. *Id.* Trustee's Attorney notes that he filed the Objection despite missing the deadline as the nature of the Objection is not a discretionary one under 11

Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor's Plan relies on valuing a secured claim.
- B. The "Ensminger Provisions" in Debtor's Plan impermissibly modify a creditor's secured claim.
- C. Debtor may have assets that are not listed on Schedule B.

DISCUSSION

The court understands that COVID-19 has impacted attorney work and will consider the instant Objection as timely filed. The delay in filing is not of prejudice to the Debtor.

Trustee's objections are well-taken.

Debtor's Reliance on Motion to Value Secured Claim

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of The Golden 1 Credit Union. Debtor has failed to file a Motion to Value the Secured Claim of The Golden 1 Credit Union, however. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

Ensminger Provisions

The Trustee's Objection asserts that the "Ensminger Provision" in Debtor's Plan improperly modifies a claim secured only by a security interest in real property that is Debtor's principal residence. 11 U.S.C. §1322(b)(2). Creditor has filed a Proof of Claim indicating a secured claim in the amount of \$473,397.61, secured by a first deed of trust against the property commonly known as 170 Aviator Circle, Sacramento, California. Proof of Claim No. 7. Debtor's Schedules indicate that this is Debtor's primary residence. Dckt.1.

Debtor's Plan proposes monthly adequate protection payments in the amount of \$1,800.00 to NewRez LLC d/b/a/ Shellpoint Mortgage Servicing ("Creditor"). Plan, Dckt. 4.

According to Trustee's calculations, these monthly payments of \$1,800.00 to Creditor are insufficient to provide adequate protection to Creditor pursuant to 11 U.S.C. § 361. Debtor values the property at \$514,522.00 and schedules a debt of \$477,214.00 against the property. Dckts 4, 1. Additionally, Debtor's Plan and Schedule J do not show any property taxes and home insurance expenses. Trustee's calculations show that Debtor would have to pay \$2,238.00 a month to amortize a \$477,214.00 loan over thirty (30) years at 3.855% interest. When a reasonable expense for insurance (\$66.00) and property tax (\$314.00) are included, Debtor is paying \$818.00 less than what is required to pay off the loan in thirty (30) years.

Thus, while phrases as "improperly modifies," the Trustee's actual objection is that the purported adequate protection payment is not adequate. The Trustee's calculation above is consistent with that utilized

by the court when there is a dispute over what is an adequate protection payment, using what the payment would be if the creditor wrote the loan down to the value of the property, then amortized 100% over thirty years at a market interest rate.

This adequate protection calculation is to address a debtor who would seek to make an unreasonably low payment just to retain possession as long as possible, quite possibly paying less than what would be the reasonable rent for the abode.

Assets Not Listed on Schedule B

Debtor admitted at the First Meeting of Creditors on June 11, 2020 that she is applying for Worker' Compensation due to carpal tunnel syndrome, and that she may have a wrongful termination claim. Based on this information, Debtor may have additional assets during the life of the plan, which should be included in Schedule B. As such, Debtor's Plan may not be paying unsecured claims what they would receive in the event of a Chapter 7 liquidation. 11 U.S.C. §1325(a)(4).

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

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

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

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), 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—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 21, 2020. By the court's calculation, 54 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtors, Majid Foroutan and Forozan Dorratoltaj ("Debtor"), have provided evidence in support of confirmation. the Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on June 17, 2020. Dckt. 45. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtors, Majid Foroutan and Forozan Dorratoltaj ("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 21, 2020, 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.

10. [19-26846-E-13](#)
[ADR-2](#)

LEANNE BOGER
Justin Kuney

**MOTION FOR CONSENT TO ENTER
INTO LOAN MODIFICATION
AGREEMENT
6-10-20 [33]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on June 10, 2020. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

<p>The Motion to Approve Loan Modification is granted.</p>

The Motion to Approve Loan Modification filed by Leanne Lynn Boger ("Debtor") seeks court approval for Debtor to incur post-petition credit. Bank United N.A. ("Creditor"), whose claim the Plan provides for in Class 1, and the Secretary of Housing and Urban Development have offered a loan modification that will reduce Debtor's mortgage payment from the current \$2,036.76 per month to \$1,870.48 per month. The modification will capitalize the pre-petition arrears and provide for a yearly interest rate of 3.875% for thirty (30) years.

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

In consideration for the reduced unpaid principal balance, Debtor executed a promissory note

and Partial Claims Mortgage in favor of the Secretary of Housing and Urban Development in the amount of \$93,461.33. The Note and Partial Claim Mortgage call for no monthly payments and do not accrue interest. Declaration, Dckt. 35.

Trustee's Opposition

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on June 24, 2020 on the basis that Debtor will not be able to afford the proposed monthly payments. Dckt. 43. Debtor is \$13,569.63 delinquent in plan payments, and a Motion to Dismiss the case was set for hearing on July 1, 2020. *Id.*

Aside from the modified terms, Trustee notes states that Debtor "also incurred a partial claims mortgage with for \$93,461.33." *Id.*, p. 2:10. The court is unsure of what objection grounds are asserted thereby.

Additionally, Trustee asserts that since Debtor executed the modified loan on May 15, 2020, Debtor has not provided any evidence of making modified mortgage payments even though the loan modification commenced on March 1, 2020. *Id.* Furthermore, Debtor has failed to file a modified plan as of the filing date of the Opposition. *Id.*

DISCUSSION

The court begins by addressing Trustee's concerns.

The Motion to Dismiss was denied without prejudice on July 1, 2020. Dckt. 53. At that hearing, the Trustee concurred to the denial of the motion on the grounds that Debtor was prosecuting a loan modification. Minutes, Dckt. 52.

Second, Debtor filed a Modified Plan and Motion to Confirm on June 30, 2020. Dckts. 50, 46. The hearing has been set for August 25, 2020. Dckt. 46. The Modified Plan provides \$17,200.00 total paid into the plan for months one (1) through eight (8), with monthly plan payments of \$670.00 for months nine (9) through sixty (60), and a 0% dividend for unsecured claims totaling \$38,952.60. The Modified Plan provides that Creditor's claim will be treated as a Class 4 claim, with monthly payments of \$1,870.48. Dckt. 50. Amended Schedules I and J have been filed as Exhibit A in support of the Plan. Dckt. 49.

In her Declaration, Debtor explains the reasoning behind the corrected Schedules that have been filed as Exhibits in support of the Modified Plan but are yet to be filed as Amended Schedules. *Id.* These corrections, Debtor argues together with the instant loan modification will allow her to make the proposed plan payments. *Id.* Though there are issues with the documents in support of the Plan, Debtor has filed the Motion accounting for among other things the instant loan modification and has set it for hearing.

The issue before the court now is whether to authorize the Modification and allow the Debtor to improve Debtor's mortgage payment terms. While the Debtor may have other challenges, they do not warrant denying the Debtor the opportunity to fix at least part of her financial problems.

This post-petition financing is consistent with the proper prosecution of this Chapter 13 case.

The Motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification is granted.

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

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

The Motion to Approve Loan Modification filed by Leanne Lynn Boger (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the court authorizes Leanne Lynn Boger to amend the terms of the loan with Bank United N.A. (“Creditor”), which is secured by the real property commonly known as 7448 Garden Gate Drive, Citrus Heights, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion (Dckt. 36).

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 18, 2020. By the court's calculation, 57 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 granted and the Modified Plan is confirmed.

The debtor, Hazara Islam ("Debtor") seeks confirmation of the Modified Plan because the income of Debtor and Debtor's spouse has been reduced by 20% due to COVID-19. Declaration, Dckt. 27. The Modified Plan provides monthly plan payments of \$1,100.00 for six (6) months, followed by monthly plan payments of \$730.00 for 78 months, and a 17% dividend to unsecured claims totaling \$33,000.00. Modified Plan, Dckt. 26. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response on June 24, 2020. Dckt. 32. Trustee notes that Debtor has made all of the payments through June 2020 under the Plan confirmed on January 28, 2020. Under the Modified Plan, Debtor is ahead in payments by \$740.00. Debtor would need to pay into the Trustee through June 2020 a total of \$8,060.00, but Debtor has actually paid a total of \$8,800.00 as of the filing date of the Response. Trustee would not object if the plan is corrected such that the Modified Plan provides Debtor to pay a total of \$8,800.00 through month 8, followed by monthly plan payments of \$730.00 for months 9 through 84.

DISCUSSION

Trustee does not object to the confirmation of the Plan but requests an amendment that corrects the plan payment as Debtor is ahead in payments.

At the hearing, Debtor and Debtor's Counsel xxxxxxxxxx.

There being no objection to the actual terms of the Plan, the Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Hazara Islam ("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 17, 2020, 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 24, 2020. 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 -----
-----.

<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 lists a Class 2(a) that according to the non-standard provisions will be paid for directly by Debtor until Plan confirmation, which may amount to unfair discrimination against general unsecured claims.

DISCUSSION

Trustee's objection is well-taken.

Possible Unfair Discrimination of Unsecured Claims

Trustee opposes confirmation due to possible unfair discrimination to unsecured claims under 11 U.S.C. § 1322(b)(1). Debtor proposes to pay 49.44% to unsecured claims; however, Debtor proposes

to pay the Class 2 secured debt directly until plan confirmation.

Trustee asserts that Debtor has failed to provide sufficient information relating to this particular debt or explain why this debt should be paid directly by the Debtor. There being not enough information about this debt, Trustee is unsure if this direct payment constitutes unfair discrimination against general unsecured claims who are not paid in full. 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 a minute order substantially in the following form holding that:

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

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, 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.

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 24, 2020. 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 -----
-----.

<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's proposed Plan relies on a yet to be filed motion to value a secured claim.
- B. Debtor's Plan will exceed the maximum amount of time allowed under the Bankruptcy Code.

DISCUSSION

Trustee's objections are well-taken.

Debtor's Reliance on Motion to Value Secured Claim

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Bank of America. Debtor has failed to file a Motion to Value the Secured Claim of Bank of America, however. Without the court valuing the claim, the Plan is not feasible. 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 the claim for pre-petition arrears on Debtor's mortgage being in the amount of \$61,827.60, which is higher than the scheduled amount of \$50,973.11. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

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

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

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

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, 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 13, 2020. By the court's calculation, 62 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 Amended 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 Amended Plan is granted.</p>
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The debtor, Cynthia Leeann Ross ("Debtor") seeks confirmation of the Amended Plan on the basis that Debtor wishes to save her home from foreclosure, has since rented rooms in her house to gain income, and has adjusted her expenses in order to make the Modified Plan work. Declaration, Dckt. 49. The Amended Plan provides for:

1. payments of \$1,040.00 per month for three months,
2. one payment in the amount of \$1,400.00 for April 25, 2020,
3. monthly payments of \$1,760.00 for eleven months,
4. followed by monthly payments of \$1,538.00 for the remainder of the Plan,
5. and a zero (0) percent dividend to unsecured claims totaling \$30,466.66.

Amended Plan, Dckt. 50. 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 17, 2020. Dckt. 54. Trustee opposes confirmation of the Plan on the basis that Debtor is delinquent in plan payments.

DEBTOR'S RESPONSE

Debtor filed a Response on July 1, 2020 asserting that she sent a cashier's check in the amount of \$2,151.80 on June 25, 2020. Dckt. 57. Debtor filed a copy of the cashier's check as Exhibit A in support of the Response. Dckt. 58. Such copy was not properly authenticated.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is \$391.80 delinquent in plan payments, which represents a portion of one month of the \$1,760.00 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).

At the hearing, Trustee updated the court regarding the alleged payment, stating
XXXXXXXXXX .

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

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

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

~~————— The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Cynthia Leeann Ross ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing;~~

~~————— **IT IS ORDERED** that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on May 13, 2020 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 8, 2020. By the court's calculation, 36 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 granted.</p>
--

The debtor, Caroline Amen Obaseki and Kingsley Uyi Obaseki ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly plan payments of \$3,580.00 for 55 months and a zero (0) percent dividend to general unsecured claims in the amount of \$31,400.47. Debtor has paid \$13,677.86 into the Plan through May 2020. Amended Plan, Dckt. 53. 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 16, 2020. Dckt. 58. Trustee opposes confirmation of the Plan on the basis that:

- A. There is a discrepancy between Section 3.05 of Debtor's Amended Plan and the disclosure of Attorney Compensation.
- B. Debtors have not resolved the prior objection raised by Trustee where Trustee objected on the basis that Debtors have failed to provide sufficient information about their sole proprietorship.

Debtor's Response

On July 6, 2020, Debtor filed a Response addressing Trustee's objections. Dckt. 64. Debtor's Response is discussed below.

DISCUSSION

Discrepancy in Disclosed Attorney's Fees

Local Bankruptcy Rule 2016-1(c)(2) provides "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." LOCAL BANKR. R. 2016-1(C)(2).

Here, according to the filed Rights and Responsibilities form, Debtors list attorney's fees in the amount of \$6,000.00, with \$1,500.00 having been paid prior to the filing of the case. Dckt. 4. Debtor's Amended Plan and the Disclosure of Attorney Compensation show attorney's fees in the amount of \$4,000.00. Dckt. 53, 33. The discrepancy between documents calls into question whether Rule 2016-1(c)(2) has been complied with.

In their Response, Debtor states they will file an amended Rights and Responsibilities before the hearing. Dckt. 63.

Insufficient Information

Debtor has failed to timely provide Trustee with information related to Debtor's sole proprietorship. Debtor fails to provide sufficient evidence to establish their business and assets and liabilities each have a value of \$0.00.

Debtor show they are sole proprietors of "Safe Ride Motors, LLC," which is operating, according to Trustee, despite Debtor not claiming an interest in the limited liability company on their schedules A/B and J. Trustee asserts the California Secretary of State website listed the business as "suspended." Dckt. 58. The information form for the website describes the business as an "Auto Wholesale Dealership." Debtor is required to submit documents and cooperate with Trustee. 11 U.S.C. § 521(a)(3). Without Debtor submitting all required documents, the court and Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325.

As to this objection, Debtor confirms in their Declaration that the business is no longer operating. Dckt. 64. Moreover, Debtor testifies that the business has no remaining inventory, and explains that the Department of Motor Vehicles has since closed the business and cancelled its license on the basis that Debtor could not pay for the insurance. *Id.*

At the hearing XXXXXXXXXX

~~_____The Amended Plan complies with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is confirmed.~~

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

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

hearing.

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Caroline Amen Obaseki and Kingsley Uyi Obaseki (“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 Caroline Amen Obaseki and Kingsley Uyi Obaseki’s (“Debtor”) Chapter 13 Plan filed on June 8, 2020, 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.

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 June 8, 2020. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

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

The debtor, Gerald William Johnson ("Debtor") seeks confirmation of the Amended Plan. The Amended Plan provides monthly plan payments of \$2,105.60 with a 100 percent dividend to general unsecured claims in the amount of \$0.00. Amended Plan, Dckt. 43. 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 16, 2020. Dckt. 47. Trustee opposes confirmation of the Plan on the basis that

- A. Debtor's plan fails to provide for two secured claims.

Debtor's Reply

Debtor filed a Reply to Trustee's Opposition on July 9, 2020. Dckt. 53. Debtor's Reply is discussed below.

DISCUSSION

Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The Franchise Tax Board filed a secured claim in the amount of \$5,703.99 and TIAA, FSB claims post-petition fees in the amount of \$350.00. Debtor does not provide for either claim in the Plan and Debtor's Schedule J does not list any expenses that could be used to provide for these claims. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

In the Reply, Debtor asserts that the Franchise Tax claim in the amount of \$5,703.99 will be classified as a Class 2(A) for the amount stated and paid at the interest rate of 5%.

Based on that proposed change, the Trustee no longer opposes confirmation. The Reply is signed by both Debtor's Counsel and Trustee's Counsel.

At the hearing, Debtor's Counsel addressed the \$350.00 in post-petition fees filed by TIAA, FSB, xxxxxxxxxx .

~~The Amended Plan, as further amended to provide for the Franchise Tax claim and the TIAA, FSB fees, complies with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is confirmed.~~

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

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

~~The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Gerald William 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 the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on June 8, 2020, as amended at the hearing to provide for the Franchise Tax Board claim and TIAA, FSB post-petition fees is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, which plan shall state the amendments stated at the hearing, 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 17, 2020. 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 has failed to provide Trustee with a Domestic Support Obligation Checklist.
- B. Debtor has not disclosed the nature of the debt to a Domestic Support Obligation.

DISCUSSION

Trustee's objections are well-taken.

Domestic Obligations

11 U.S.C. §§1302(b)(6) and (d)(1) requires the trustee to provide to the holder of a claim for a domestic support obligation written notice of such claim and of the right of such holder to use the services of the State child support enforcement agency established under the Social Security Act for the State in which such holder resides, for assistance in collecting child support during and after the case.

Moreover, under Local Rule 3015-1(b)(6), “the debtor shall provide to the trustee, not later than the fourteen (14) days after the filing of the petition, Form EDC 3-088, Domestic Support Obligation Checklist, or other written notice of the name and address of each person to whom the debtor owes a domestic support obligation together with the name and address of the relevant state child support enforcement agency (*see* 42 U.S.C. §§ 464 & 466), Form EDC 3-086, *Class 1 Checklist*, for each Class 1 claim, and Form EDC 3-087, *Authorization to Release Information to Trustee Regarding Secured Claims Being Paid By The Trustee*. ”

Here, Debtor has failed to provide Trustee with Form EDC-3-088, Domestic Support Obligation Checklist. This is failure to “cooperate with the trustee as necessary to enable the trustee to perform the trustee’s duties.” *See* 11 U.S.C. §521(a)(3).

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’s Schedule I shows a domestic support obligation in the amount of \$666.25. Trustee is unable to ascertain with the current information provided whether the payment is ongoing, an arrearage, or simply the amount the Debtor decides to pay. Trustee seeks amendments to Schedules D and E/F to reflect the creditor. 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 a minute order substantially in the following form holding that:

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

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, 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.

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 17, 2020. 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 Debtor is delinquent in plan payments.

DISCUSSION

Trustee's objection is well-taken.

Delinquency

The Chapter 13 Trustee asserts that Debtor is \$322.53 delinquent in plan payments, which represents one month of the \$322.53 plan payment. According to the Chapter 13 Trustee, the Plan in § 2.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

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

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

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

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, 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.

19.	<u>19-27091</u> -E-13 <u>BLG</u> -3 19 thru 20	MAISHA ANDERSON Chad Johnson	MOTION TO VALUE COLLATERAL OF INTERNAL REVENUE SERVICE 6-2-20 [42]
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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’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 2, 2020. 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.

<p>The Motion to Value Collateral and Secured Claim of the Internal Revenue Service is granted, and Creditor’s secured claim is determined to have a value of \$9,559.59.</p>
--

The Motion filed by Maisha Nyota Anderson (“Debtor”) to value the secured claim of the Internal Revenue Service (“IRS” or “Creditor”) is accompanied by Debtor’s declaration. Declaration, Dckt. 45. Debtor is the owner of clothing, electronics, two vehicles, jewelry, 2018 and 2019 refunds owed to Debtor, pets, and household goods (“Property”). For the complete list of property, *see* Exhibit A, Dckt. 44. Debtor seeks to value the Property at a replacement value of \$19,875.00 as of the petition filing date. As the owner, Debtor’s opinion of value is evidence of the asset’s value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Creditor filed Proof of Claim No. 3-1 on December 6, 2019. The Proof of Claim asserts that \$16,673.00 is secured by the Property, that \$10,562.46 is a priority unsecured claim, and that \$13,875.55 is a general unsecured claim.

As has been disclosed, in filing proofs of claim, the IRS makes its own calculation for purposes of 11 U.S.C. § 506(a) based upon Debtor’s assets and then bifurcates the secured and unsecured portions of its claim. The IRS appears to have followed that procedure here.

Debtor further asserts that the Employment Development Division (“EDD”) is a second creditor. EDD filed Proof of Claim 10-1 on February 14, 2020. The Proof of Claim asserts a claim of \$10,315.41, secured by the Property.

Trustee’s Response

Trustee filed a Response on June 24, 2020 noting that Debtor’s Declaration contains inconsistent statements regarding the valuation of the Property at the time of the petition. Dckt. 66.

Debtor filed a Reply on July 7, 2020 explaining that the discrepancy noted by Trustee in Debtor’s Declaration where she states “In my opinion, the value of CREDITOR’S secured claim is \$34,161.39, which is the sum of equity in all personal property that exists in the county in which the lien was recorded” was a typo as to the valuation and Debtor will file Supplemental Declaration to clarify the valuation. Dckt. 69. Debtor filed a Declaration on July 10, 2020 correcting this oversight which states:

4. In my opinion, the value of CREDITOR’s secured claim is \$19,875.00, which is the sum of equity in all personal property that exists in the county in which the lien was recorded.

Declaration, at 2.

DISCUSSION

Here, the Claim held by the EDD is senior to the Claim held by the IRS because the lien for the EDD was recorded on November 2, 2010 and Creditor’s lien was recorded on February 18, 2016. Debtor’s valuation is achieved by subtracting the value of the EDD’s claim from the value of the Property (\$19,875.00 - \$10,315.41 = \$9,559.59). The amount of \$9,559.59 is what remains of the Property’s value.

Upon review of the evidence and the statement of the secured claim for the IRS in Proof of Claim No. 3-1, Proof of Claim No. 10-1, and Exhibits, Dckt. 44, the court determines the value of the

secured claim to be \$9,559.59, with the balance to be treated as unsecured claims (whether priority or general unsecured claims).

The Motion is granted.

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

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

The Motion to Value Collateral and Secured Claim filed by Maisha Nyota Anderson (“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 the Internal Revenue Service (“IRS” or “Creditor”) secured by an asset described as clothing, electronics, two vehicles, jewelry, 2018 and 2019 refunds owed to Debtor, pets, and household goods (“Property”) is determined to be a secured claim in the amount of \$9,559.59, and the balance of the claim is an unsecured claim (whether priority or general unsecured claim) to be paid through the confirmed bankruptcy 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.

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's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 2, 2020. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

The debtor, Maisha Nyota Anderson ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly plan payments of \$863.00 for 55 months with a zero (0) percent dividend to general unsecured claims in the amount of \$46,459.88. Amended Plan, Dckt. 48. 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 16, 2020. Dckt. 61. Trustee opposes confirmation of the Plan on the basis that:

Debtor has made no payments for six months while the case was pending, and Debtor has not made the May payment which was set less than a week before Trustee's Motion to Dismiss on July 1, 2020. Trustee states the case should be dismissed if the Debtor is not current on payments.

DISCUSSION

Here, Debtor has made no payments for the six months the case has been pending. A plan should not be confirmed unless the debtor is current in payments pursuant to 11 U.S.C. § 1325(a)(2), (6).

Debtor survived the Motion to Dismiss on grounds that she was prosecuting the case by filing this Amended Plan. However, it is unknown whether Debtor has made any payments after that date.

At the hearing, xxxxxxxxxxxxxxxx.

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

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Maisha Nyota Anderson (“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 and Debtor's Attorney on June 24, 2020. 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 -----
-----.

<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's Plan relies on a Motion to Value Collateral which has not been filed.
- B. Debtor's Class 4 automobile debts are listed in Class 4 when they should be listed in Class 2.
- C. Debtor checked the box in section 1.02 of the Plan to include non-standard provisions but has not provided those.

DISCUSSION

Trustee's objections are well-taken.

Debtor's Reliance on Motion to Value Secured Claim

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Connexus. Debtor has failed to file a Motion to Value the Secured Claim of Connexus, however. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

Improper Classification of Debts

Here, Trustee asserts Debtor's Plan lists Ford Motor Credit Company, LLC's claim on two vehicles, a 2107 Ford Fusion with a maturity date of August 19, 2023, and a 2018 Ford Escape with a maturity date of April 23, 2024 under Class 4. Trustee asserts the debts are not long term and instead should be listed under Class 2.

Cannot Comply with the Plan

Debtor may not be able to comply with the mandatory plan form as required under Local Bankruptcy Rule 3015-1(a). Debtor checked the box in section 1.02 of the Plan indicating there would be non-standard provisions, but none were included. Debtor may be failing to report information that may be integral to the administration of the 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 a minute order substantially in the following form holding that:

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

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, 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: The Motion to Confirm has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

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 5, 2020. By the court's calculation, 39 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is granted.
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11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Maria De Jesus Flores Rios ("Debtor") has provided evidence in support of confirmation.

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response indicating non-opposition on June 16, 2020. Dckt. 32. But the Trustee notes that the court may want additional information when there has been a personal injury settlement in the amount of \$100,000 less attorney

fees, where no order authorizing employment (or the settlement) appears in the record. *Id.*

At the hearing, Debtor's counsel address the issue of the personal injury settlement and whether unauthorized professionals were being paid, reporting **XXXXXXXXXX**

~~————— The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.~~

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

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

~~————— The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Maria De Jesus Flores Rios ("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 June 5, 2020, 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 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 current attorney, and Debtor's former attorney on March 4, 2020. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion to Disgorge Fees is granted, and Thomas O. Gillis shall disgorge and repay directly to the Clerk of the Bankruptcy Court \$2,000.00 in compensation which he received from the Debtor Erica Gomez and is in excess of the amount allowed for the legal services rendered.

Thomas O. Gillis is an attorney who had a very prolific practice in the Eastern District of California Bankruptcy Court for a number of years. When the undersigned judge Chief Judge first came on the bench, Mr. Gillis focused on doing Chapter 11 and 13 cases. That evolved into a Chapter 13 practice in which his office focused on providing legal services in Chapter 13 consumer restructures and Chapter 7 liquidation for Hispanic clients who had limited or nonexistent English language skills.

In the late 2010's that practice ceased when Mr. Gillis was suspended by the State Bar of California. Mr. Gillis signed a stipulation on April 30, 2019, with the State Bar for a two year suspension from the practice of law. The Chief Justice of the California Supreme Court issued her order for his suspension on November 1, 2019, with the suspension effective December 1, 2019. Mr. Gillis made a request for a continuance to allow him additional time to assist his clients in obtaining replacement counsel. Pursuant to that request the State Bar Court delayed the suspension until January

31, 2020. On January 28, 2020, Mr. Gillis made a second request for the extension of the start of his suspension until March 15, 2020, so that he could have additional time for assisting his clients. The State Bar granted a final delay in Mr. Gillis suspension, ordering that suspension commence on February 15, 2020, and ordering Mr. Gillis not to accept any new clients. ^{FN. 1.}

FN. 1. Ruling on Chapter 13 Trustee Objections to Attorney Fee Compensation, 19-12274, Dckt. 42; Supreme Court Order of Suspension, S256770 (State Bar Court Nos. 16-O-10780 (17-O-02624; 17-O-04790), Filed November 1, 2019; Order Filed February 7, 2020, State Bar Court of California, *In re Gillis*, 16-O-10780; Order Filed November 27, 2019, State Bar Court of California, *In re Gillis*, 16-O-10780.

REVIEW OF MOTION TO DISGORGE FEES AND OPPOSITION

Michael H. Meyer (“Chapter 13 Trustee”) filed this Motion seeking review and disgorgement of fees paid by then-debtor, Erica Alejandra Gomez (“Debtor”) to counsel, Thomas O. Gillis (“Counsel”). Trustee seeks disgorgement of attorney fees pursuant to 11 U.S.C. § 329(b) and Local Rule 2016-1(c)(4) in the amount of \$2,000.00 from Thomas O. Gillis on the basis that Debtor’s case was dismissed prior to confirmation.

Trustee provides the following factual background in the Motion, which is accompanied by the Declaration of Sarah Velasco (Dckt. 129):

- A. Mr. Gillis was Debtor’s attorney of record for case no. 18-13284 filed on August 10, 2018. Mr. Gillis elected to take the no-look fee of \$4,000.00 which was paid by Debtor on July 31, 2018.
- B. The Plan was confirmed on October 4, 2018, but the case was dismissed on February 20, 2019 for delinquency.
- C. Mr. Gillis signed a stipulation with the California State Bar agreeing to a suspension of his license for two (2) years on April, 30, 2019 which would take effect on February 16, 2020.
- D. On May 31, 2020, Mr. Gillis filed another case for Debtor (no. 19-12351) a month after signing the stipulation and again received the no-look fee of \$4,000.00 from Debtor, bringing his total compensation from Debtor to \$8,000.00.
- E. The second case was dismissed for failure to make payments after Mr. Gillis did not appear at the hearing on November 14, 2019.
- F. On January 27, 2020, Mark Hannon filed a third case for Debtor and also took the \$4,000.00 no-look fee, bringing the total compensation to Mr. Gillis and his business associate to \$12,000.00.

- G. Trustee asks the court to review Mr. Gillis's fees pursuant to LBR 2016-1(c)(5) which mandates an attorney is entitled to 50% of the no-look fee when a case is dismissed.
- I. Trustee then prays for an order disgorging fees pursuant to 11 U.S.C. § 329(b) where appropriate to ensure Mr. Gillis is only compensated for the reasonable value of services rendered.

Velasco Declaration

Trustee filed the Declaration of Sarah Velasco on June 24, 2020. Dckt. 129.

- A. Sarah Velasco is a staff attorney for standing Chapter 13 Trustee Michael H. Meyer.
- B. Debtor filed a Chapter 13 petition on August 10, 2018 with Mr. Gillis as the attorney of record and paid Mr. Gillis the \$4,000.00 no-look fee.
- C. The Plan was confirmed on October 4, 2018 and dismissed for delinquency on February 20, 2019 after Mr. Gillis did not file anything in response to the Motion to Dismiss.
- D. Mr. Gillis signed a stipulation with the California State Bar on April 30, 2019 for a two (2) year suspension of his license to practice law effective February 16, 2020.
- E. A month after signing the stipulation, Mr. Gillis filed a second petition for Debtor (case no. 19-12351), for which he was compensated \$4,000.00.
- F. After dismissal of that case, a third bankruptcy was filed for Debtor by Mark Hannon who took a \$4,000.00 fee.
- G. The amounts paid to Mr. Gillis and Mark Hannon were testified to by Debtor at the 341 Meeting of Creditors at which Ms. Velasco was the examining officer.

In support of this Motion, Trustee includes Exhibits A (Debtor's Statement of Financial Affairs), Exhibit B (Trustee's Notice of Default and Intent to Dismiss Case), and Exhibit C (Debtor's Statement of Financial Affairs), all properly authenticated by Sarah Velasco. Dckt. 131.

Mr. Gillis' Response

Mr. Gillis filed a Response on June 24, 2020, Dckt. 135. Debtor was dismissed for failure to make a payment. Mr. Gillis discussed Debtor's financial situation with her in person though was careful not to give legal advice. Debtor is unable to make the mortgage payment at the amount set out in the plan. Debtor is a single mother, her husband is undocumented, lives in Mexico, and does not pay domestic support. Debtor is contemplating a loan modification or allowing the property to return to the

lender, and may need to file another chapter 13 bankruptcy to stop the foreclosure on her home. If Debtor can secure the loan modification, she may qualify for a Chapter 7 bankruptcy and discharge of her unsecured debt.

Mr. Gillis seeks a 45 day continuance to see if the loan modification is granted and while Debtor attempts to rent out the house. Mr. Gillis also requests 30 days to respond to the merits of Trustee's Motion and asserts a status report on the loan modification can be filed within 30 days.

Mr. Gillis filed a Declaration in support of his Response on June 24, 2020, Dckt. 136. The facts in the declaration are the same as those in Mr. Gillis's Response and declared to be true and correct under penalty of perjury.

June 24, 2020 Status Report

Mr. Gillis filed a Status Report on June 24, 2020, Dckt. 140. Mark Hannon's staff assisted Debtor in obtaining a loan modification application from the creditor. Debtor completed the application and sent it back to the creditor, resulting in the foreclosure being delayed until July 29, 2020. Mr. Gillis expects the modification will be approved because companies that originally were not modifying loans are now starting to during the pandemic. Mr. Gillis asserts Debtor is a nice person, a single mother, and has worked as an interviewer for the Social Security Administration for many years. Her husband was deported and does not pay child support. Mr. Gillis states he will keep the court apprised on whether or not the modification is approved.

APPLICABLE LAW

Congress provides in 11 U.S.C. § 329(a) that the bankruptcy judge may review the compensation that an attorney representing a debtor receives or is owed for services rendered or to be rendered in contemplation of or in connection with a bankruptcy case. Then, the bankruptcy judge may also determine whether the compensation paid or owed to the attorney exceeds the reasonable value of any such services provided by the attorney. If the compensation exceeds the reasonable value of such services, the bankruptcy judge may cancel the agreement between the attorney and debtor or order the return of payments made to the attorney to the extent excessive. 11 U.S.C. § 329.

Reasonable Fees

As discussed in 3 Collier on Bankruptcy, ¶ 329.04[1], reasonableness of fees as determined under 11 U.S.C. § 329(b) is a question of fact based on the circumstances of each case.

What constitutes reasonableness is a question of fact to be determined by the particular circumstances of each case. The requested compensation may be reduced if the court finds that the work done was excessive or of poor quality. [FN2] Similarly, compensation may be reduced if the court determines that the attorney took advantage of the debtor or a third party paying fees on the debtor's behalf. The reasonableness of a prepetition fee agreement between a debtor and the debtor's attorney is an inquiry within the sound discretion of the bankruptcy court. The court, however, must make explicit findings when determining the reasonableness of the subject compensation.

[FN2] *Hale v. U.S. Trustee*, 509 F.3d 1139 (9th Cir. 2007) (bankruptcy petition incomplete and erroneous requiring extensive amendments); *Bleichman v. Sapir (In re Heilpern)*, 2018 U.S. Dist. LEXIS 170252, at *7–10 (S.D.N.Y. Sept. 27, 2018) (affirming bankruptcy court’s denial of compensation to attorney who failed to appear, missed deadlines, and otherwise was inattentive to the case); *In re Lee*, 495 B.R. 107, 113–14 (Bankr. D. Mass. 2013) (explaining how the court may order disgorgement of all fees when “an attorney ineptly or incompetently renders services on behalf of debtors,” or may reduce fees if the work done was of poor quality); *In re Sponhouse*, 477 B.R. 147, 154–55 (Bankr. D. Nev. 2012) (quoting treatise and finding that compensation was excessive when “services were deficient and of poor quality” and counsel’s representation of debtor “reflects both a lack of competence and diligence”); *In re Gage*, 394 B.R. 184 (Bankr. N.D. Ill. 2008) (court may cancel any compensation agreement if excessive and order funds returned to the estate); *In re Laberge*, 58 C.B.C.2d 2025, 380 B.R. 277 (Bankr. D. Mass. 2008) (\$6,000 for no asset chapter 7 case with few creditors was excessive); *In re Irons*, 379 B.R. 680 (Bankr. S.D. Tex. 2007).

Factors that a bankruptcy court commonly considers in review fee applications of attorneys includes whether the 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)).

Disgorgement of Fees

Once a question has been raised about the reasonableness of an attorney’s fee under section 329, the attorney bears the burden of establishing that the fee is reasonable.” 3 COLLIER ON BANKRUPTCY P 329.01 (16th 2019). Section 329(b) provides that if “such compensation exceeds the reasonable value of any such services, the court may cancel any such agreement, or order the return of

any such payment, to the extent excessive, to ... the entity that made such payment.” 11 U.S.C. 329(b).

On the subject of disgorgement, Collier states:

The bankruptcy court has the authority and responsibility to look for ethical breaches when examining fee transactions. Compensation may be denied, particularly when an attorney intentionally misrepresents facts or deceives the court. The bankruptcy court may order disgorgement of fees, award costs, or impose other penalties when an attorney is found to have committed a fraud on the court or when an attorney has a conflict of interest. A bankruptcy court does not have to calculate how much the unethical conduct depleted the value of the attorney’s service, but may, in its discretion, deny compensation in whole or in part. It may also order disgorgement of all fees already paid.

3 COLLIER ON BANKRUPTCY P 329.04 (16th 2019).

Local Rule 2016-1(c)(4) provides that “[i]f an attorney elects to be compensated pursuant to Subpart (c) but the case is dismissed prior to confirmation of a plan, absent a contrary order, the trustee shall pay to the attorney, to the extent funds are available, an administrative claim equal to fifty per cent (50%) of the total fee the debtor agreed to pay less any pre-petition retainer. The attorney shall not collect, receive, or demand additional fees from the debtor unless authorized by the Court.”

DISCUSSION

The court has reviewed the Docket for Debtor Erica Gomez’s bankruptcy case No. 19-12351 for which Mr. Gillis has been paid \$4,000. The case was filed on May 31, 2019. 19-12351; Petition, Dckt. 1. The Federal Rule of Bankruptcy Procedure 2016 Disclosure of Compensation states that Mr. Gillis was paid \$4,000.00 by the Debtor for legal services in connection with the bankruptcy case. *Id.*, Dckt. 1 at 48. A Chapter 13 Plan was filed. *Id.*, Dckt. 2.

On July 1, 2019, the Chapter 13 Trustee filed a Motion to Dismiss case No. 19-12351 due to the Debtor’s default in plan payments. *Id.*, Dckt. 17. The Trustee filed a second Motion to Dismiss that bankruptcy case due to Debtor’s failure to attend the scheduled First Meeting of Creditors. *Id.*, Dckt. 24.

Mr. Gillis filed an Opposition to the Motion to Dismiss based on the failure to attend the First Meeting of Creditors, asserting that the Debtor (who was represented by Mr. Gillis) was “unaware of the hearing.” *Id.*; Opposition, Dckt. 34.

As In Debtor’s second case (Case No. 19-12351), Counsel elected to be compensated by the no-look fee under Local Rule 2016-1(c). A review of that case docket shows there was no confirmed plan prior to the case’s dismissal. Debtor filed a plan on May 31, 2019 (Dckt. 2), and the case was dismissed on November 14, 2019 (Dckt. 64). Accordingly, pursuant to Local Rule 2016-1(c)(4), the trustee will only pay Counsel 50% of the total \$4,000.00 Debtor has paid, absent a contrary order. A

simple declaration is filed with the Opposition in which the Debtor states under penalty of perjury that she (while being represented by Mr. Gillis) “did not get notice of the hearing” *Id.*; Declaration, Dckt. 35.

The Chapter 13 Trustee dismissed both of his Motions to dismiss the bankruptcy case. *Id.*, Dckts. 39, 41.

On October 8, 2019, the Chapter 13 Trustee filed a third Motion to Dismiss which stated with particularity the following grounds: “Unreasonable delay by debtor that is prejudicial to creditors” [but not stating what the delay was or why prejudicial] and “Failure to make all payments due under the plan” [though not stating what portion was not paid]. *Id.*, Dckt. 49. A declaration is filed in support of the third Motion to Dismiss which states that Debtor was delinquent \$1,995 in plan payments. *Id.*, Dckt. 51.

Mr. Gillis filed an “Objection” to the third Motion to Dismiss stating that the “Trustee is correct” as to the default and the Debtor is working to cure the deficiency. *Id.*; Dckt. 60.

The hearing on the third Motion to Dismiss was conducted on November 14, 2019, and state that Mr. Gillis did not appear for the Debtor at the hearing. *Id.*; Civil Minutes, Dckt. 62. Bankruptcy case No. 19-12351 was dismissed on November 16, 2019. *Id.*; Order, Dckt. 16.

The bankruptcy case was dismissed without the Debtor being able to confirm a Chapter 13 plan and the Debtor being unable to perform the Chapter 13 plan that she and her counsel filed in her bankruptcy case.

The Response filed by Mr. Gillis to the present Motion asserts that Mr. Gillis met with the Debtor, his client, to discuss her financial dilemma, but Mr. Gillis was “careful not to give any legal advice.” Declaration, p. 1:21-23; Dckt. 78. It is not clear why in November 2019, the relevant time in considering the value of the legal services, that Mr. Gillis would not be providing legal advice to his client.

The Response then outlines why the Debtor’s attempts at plan failed, or were doomed to failure. However, Debtor is represented by new counsel and is seeking a loan modification. It is unclear what Debtor does with new counsel after her prior case was dismissed without confirming a plan bears on valuing Mr. Gillis services in bankruptcy case No. 19-12351.

In the Response and Mr. Gillis Declaration (Dckt. 79) filed in support thereof, Mr. Gillis requests a 45 day continuance to see if the loan modification is granted, and then an additional 30 days to file a supplemental response. That request was made on April 14, 2020.

The Civil Minutes for the original hearing on this Motion reflect that the court did continue the hearing, and required that a status report on the loan modification be filed and that a supplemental opposition, if any, be filed by June 10, 2020. 19-12351; Civil Minutes, Dckt. 81. A Status Report was filed by Mr. Gillis on June 10, 2020, reporting that Debtor and creditor are working on a trial loan modification (reporting that this is being worked on notwithstanding Debtor having been turned down on three prior applications in light of the COVID-19 market). *Id.*; Status Report, Dckt. 88.

As the Chapter 13 Trustee notes, Local Bankruptcy Rule 2016-1 provides that an attorney and his/her debtor client in a Chapter 13 case can agree to the attorney being paid a fixed fee for representing the Chapter 13 debtor in the case. Election of the fixed fee frees the attorney and debtor of the cost and

expense of a fee application. Though a “fixed” fee, it remains subject to court review and consideration under 11 U.S.C. § 329. L.B.R. 2016-1(d)(5). Further, that the fixed fee is also subject to the express limitation that if the bankruptcy case is dismissed before confirmation of a Chapter 13 plan, then the attorney compensation cannot be more than 50% of the fixed fee, unless authorized by the court. L.B.R. 2016-1(c)(4). The court has not authorized any greater amount for Mr. Gillis in bankruptcy case No. 19-12351.

The application of the 50% limitation when a plan is not confirmed is consistent with (and actually greater) than the Fee Rubric which all of the bankruptcy judges have adopted to address the four hundred and eighteen then pending Chapter 13 cases which Mr. Gillis could not fulfill all of the legal services due to his suspension from the practice of law. Order Adopting Fee Rubric, Dckt. 150.

The Motion is granted, the court determines that \$2,000.00 is more than fair and reasonable compensation in this case in which the legal services were for the filing and maintaining a bankruptcy case without confirming a Chapter 13 Plan. The evidence presented indicates that the Debtor did not actually contemplate confirming, or being able to confirm, a Chapter 13 plan, but was only seeking to delay foreclosure while she tried and re-tried for a loan modification (which in July 2020 may be possible due to the new COVID-19 “realities” that did not exist when Debtor’s prior case, without a confirmed plan was filed.

The Court shall issue an order in substantially the following form:

The Court’s Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing on this Matter.

Upon review of the Motion for Disgorgement of Fees, opposition stated at the hearing, considering of the pleadings in support and against, the arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and Thomas O. Gillis (“Counsel”) shall turnover or pay from other monies if he is not holding the monies paid to him by the Debtor the sum of \$2,000.00 to the Clerk of the Court, who shall hold the monies with the other overpayment of attorney fee payments and recoveries by and from Thomas O. Gillis as provided in the Order Adopting the Fee Rubric (Dckt. 150).

This Order constitutes a judgment (Fed. R. Civ. P. 54(a) and Fed. R. Bankr. P. 7054, 9014) and may be enforced by Michael Meyer, the Chapter 13 Trustee, and the U.S. Trustee for Region 17 pursuant to the Federal Rules of Civil Procedure and Federal Rule of Bankruptcy Procedure (including Fed. R. Civ. P. 69 and Fed. R. Bankr. P. 7069, 9014).

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 May 22, 2020. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

The Motion to Disgorge 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.

<p>The Motion to Disgorge Fees is XXXXX.</p>
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Thomas O. Gillis is an attorney who had a very prolific practice in the Eastern District of California Bankruptcy Court for a number of years. When the undersigned judge Chief Judge first came on the bench, Mr. Gillis focused on doing Chapter 11 and 13 cases. That evolved into a Chapter 13 practice in which his office focused on providing legal services in Chapter 13 consumer restructures and Chapter 7 liquidation for Hispanic clients who had limited or nonexistent English language skills.

In the late 2010's that practice ceased when Mr. Gillis was suspended by the State Bar of California. Mr. Gillis signed a stipulation on April 30, 2019, with the State Bar for a two year suspension from the practice of law. The Chief Justice of the California Supreme Court issued her order for his suspension on November 1, 2019, with the suspension effective December 1, 2019. Mr. Gillis made a request for a continuance to allow him additional time to assist his clients in obtaining replacement counsel. Pursuant to that request the State Bar Court delayed the suspension until January 31, 2020. On January 28, 2020, Mr. Gillis made a second request for the extension of the start of his suspension until March 15, 2020, so that he could have additional time for assisting his clients. The State Bar granted a final delay in Mr. Gillis suspension, ordering that is commenced on February 15, 2020, and ordering Mr. Gillis not to accept any new clients. ^{FN. 1.}

FN. 1. Ruling on Chapter 13 Trustee Objections to Attorney Fee Compensation, 19-12274, Dckt. 42; Supreme Court Order of Suspension, S256770 (State Bar Court Nos. 16-O-10780 (17-O-02624; 17-O-

REVIEW OF MOTION TO DISGORGE FEES

Victor Islas and Lorena Gonzalez (“Debtor”) filed this Motion seeking review and disgorgement of fees paid by then-debtor, to counsel, Thomas O. Gillis (“Counsel”). Debtor seeks disgorgement of attorney fees pursuant to Local Rule 2016-1(c)(5) in the amount of \$2,000.00 from Thomas O. Gillis on the basis that Counsel did not provide adequate service or did not provide the services he was paid to provide.

Debtor provides the following factual background in the Motion, which is accompanied by the Declaration of Lorena Gonzalez (Dckt. 109):

- A. Debtor hired Mr. Gillis for the instant Chapter 13 case filed on October 30, 2017. Declaration, Dckt. 109. ¶ 3.
- B. Mr. Gills opted for a no-look fee pursuant to Local Rule 2016-1(c).
- C. Debtor’s plan was confirmed on May 17, 2018. Debtor has been in bankruptcy for 27 months and paid \$37,083.00 in plan payments to the Chapter 13 trustee. *Id.* ¶ 4.
- D. All claims bar dates have passed and post-confirmation work has yet to be performed.
- E. Debtor’s plan provides that a payment of \$2,000.00 be paid to Mr. Gillis prior to the petition filing and another payment of \$2,000.00 be paid through the plan.
- F. Mr. Gillis has been paid a total of \$4,000.00 for this instant case. *Id.* ¶ 5. The Motion alludes that Mr. Gillis was also paid \$4,000.00 for Debtor’s previous Chapter 13 case with Mr. Gillis.
- G. In a previous Chapter 13 case Debtor filed with Mr. Gillis, Debtor sought to modify their plan when problems arose. Mr. Gillis informed Debtor that it would cost an additional \$2,000.00 and advised Debtor to file a new Chapter 13 case and include additional creditors instead. *Id.* ¶ 9 Debtor followed Mr. Gillis’ recommendation. This was the first time Debtor met Mr. Gillis outside of the courtroom. *Id.* ¶ 10.
- H. When Debtor sought to modify this instant Chapter 13 case as they were behind on payments, Mr. Gillis informed Debtor that it would cost another \$2,000.00. *Id.* ¶ 11.
- I. Mr. Gillis was suspended from the practice of law on February 16, 2020.

- J. After Debtor learned of Mr. Gillis' suspension via mail, Debtor hired The Law Offices of Timothy C. Springer to take on their case in exchange for \$2,000.00 to be paid over the remainder of Debtor's plan. *See id.* ¶ 12.

Mr. Gillis' Response and Declaration

Mr. Gillis filed a Response on March 31, 2020, stating the Motion should be denied as it is "vague," "uncertain," and "premature." Dckt. 111. First, Mr. Gillis alleges that because Debtor seeks relief under 11 U.S.C. 329, Debtor would need to file a fee application under the Lodestar analysis, and there are no excess fees due to pre-confirmation work performed. *Id.* Mr. Gillis filed a Declaration in support of the Response on March 31, 2020, stating under the penalty of perjury that Debtor's case "required substantial pre-confirmation work" for a Motion to Value Collateral for an automobile. Dckt. 112. Additionally, Mr. Gillis asserts that the Motion does not state what services are required by the replacement attorney, and the Motion "merely" states the retainer fee for the replacement attorney.

Standing Trustee's Reply

The Chapter 13 Standing Trustee, Michael H. Meyer ("Standing Trustee"), filed a Reply on June 4, 2020. Dckt. 121. Trustee notes that Miscellaneous Proceeding No. 20-00202 was created to review fees of Mr. Gillis. On May 26, 2020, the United States Trustee filed an Omnibus Motion of the United States under 11 U.S.C. §§ 329 and 105 and Federal Rule of Bankruptcy Procedure 2017 (Doc. No. 4, 20-00202), which was set for hearing on June 23, 2020. That Motion seeks to review Mr. Gillis' fees for all confirmed-active cases where Michael H. Meyer is the appointed Chapter 13 trustee, including this instant case.

Debtor's Supplemental Brief

Debtor filed a Supplemental Brief in support of the Motion to Disgorge Fees on May 20, 2020. Dckt. 118. Debtor requests the court disgorge all or some of the \$8,000.00 paid to Mr. Gillis for two Chapter 13 cases spanning four years. Debtor believes Mr. Gillis only worked on their case "for less than 15 minutes for each 341 meeting that he attended." *Id.* at 1:23-26. As such, Debtor believes that Mr. Gillis did not provide adequate representation.

Debtor addresses Mr. Gillis' opposition on the basis of the Motion's "vagueness," and asks the court to consider two factors in determining the disgorgement of fees: (1) whether Debtor's new counsel earned the requested disgorgement amount if the determination is based on the replacement attorney's compensation, and (2) whether the original attorney earned the disgorgement amount if the determination is based on the inadequate representation of the original attorney. Debtor asserts that Debtor's Attorney has already performed a substantial amount of work and will continue to due to Mr. Gillis' suspension and ongoing matter with the United States Trustee.

Additionally, Debtor asserts that Mr. Gillis "fell far below" the required responsibilities as set by the no-look fee. Debtor reiterates facts from the Motion (¶¶ A-E stated above) in greater detail, including:

- A. In Debtor's previous case filed with Mr. Gillis, Case. No. 16-10478 ("First Case"), Debtor fell delinquent due to the seasonal nature of

Debtor's work. Mr. Gillis informed Debtor to either become current or have the case dismissed and file a new case. Debtor was not offered an option to modify the plan. ¶¶ 6-9.

- B. Debtor had the First Case dismissed and filed the instant case "without any legal advice from their attorney." ¶ 10.
- C. After receiving notice of Mr. Gillis' suspension, Debtor sought a second opinion and hired Debtor's Attorney on January 20, 2020. ¶¶ 15-17.
- D. Debtor's Attorney became the substitute attorney in the case through a court hearing, as Mr. Gillis did not sign the required form that Debtor's Attorney faxed to him. ¶¶ 19-22.
- E. Debtor's Attorney has filed this instant Motion, a Motion for Allowance of Professional Fees for her compensation, and a modified plan to resolve Debtor's issues. ¶¶ 18, 23-25. Debtor's Attorney is also responding to requests from the United States Trustee. ¶ 26.

Debtor states that 11 U.S.C. § 329 permits the court to determine the whether the fees charged are reasonable under the standard set by 11 U.S.C. § 330. Debtor distinguishes this instant Motion from *In re Alejandro Cervantes* because Debtor alleges Mr. Gillis has not fulfilled his required responsibilities under the no-look fee provision as opposed to a specific conduct at issue in *In re Alejandro Cervantes*.

Debtor points to *In re Wood*, a case in the District of Kansas, holding that disgorgement was warranted where an attorney associated with a legal services organization prepared filings using non-lawyers or non-licensed lawyers. Debtor then cites to *In re Wilkinson* and *In re Grimes* to note that the use of paraprofessionals are permitted under attorney supervision.

Debtor then argues that 11 U.S.C. § 329 allows for a disgorgement when "the work was done of poor quality or the conduct by the attorney diminishes the value of the legal services." *Id.* at 5:19-20-6:1-2. In support of Debtor's argument, Debtor cites to several district cases that provides the court with the discretion to impose sanctions, albeit the least restrictive, "commensurate with the egregiousness of the conduct." *Id.* at 6:13-23.

In applying the facts, Debtor argues Debtor's Attorney has earned more than the requested disgorgement fee of \$2,000.00 for work performed, including:

- 1. Spending five hours with Debtor
- 2. Filing a substitution of attorney
- 3. Filing modified plans
- 4. Responding to the United States Trustee's request for the 2004 exam
- 5. Filing a fee application

6. Filing this instant Motion and its Supplemental Brief

Furthermore, Debtor asserts Mr. Gillis has not earned the fees in either of Debtor's Chapter 13 cases because he did not fulfill his responsibilities as required under Local Rule 2016-(1)(c) when he elected for the no-look fee. This election requires attorney to sign and file the "Rights and responsibilities" ("R&R"). Debtor includes the R&R and notes the following three instances where Mr. Gillis performed a duty.

1. Mr. Gillis met with Debtor minutes before the 341(a) meeting of creditors to review the file and appeared with Debtor.
2. Mr. Gillis' office prepared a modified plan that was required because Mr. Gillis' office failed to timely provide documentation to the trustee.
3. Either Mr. Gillis or his office prepared two motions to value collateral that were necessary for plan confirmation. However, Debtor was not informed of these filings and asserts that they neither signed the corresponding declarations for the motions to value collateral nor attended the hearings in Modesto.

Debtor asserts that all other responsibilities listed in the R&R were:

- A. "not done because, neither [Mr.] Gillis nor any attorney associated with [Mr. Gillis] advised the Debtor[.]" *Id.* at 9:15-28-11.
 1. This includes all work required before the petition filing.
 2. Advising Debtor about the requirement to attend the meeting of creditors.
 3. Timely serving Debtor's plan to the Chapter 13 trustee.
- B. performed by Mr. Gillis' staff without supervision, or
 1. Timely providing the Domestic Support Obligation Checklist, Class 1 Checklist, and Authorization to Release Information to Trustee Regarding Secured Claims Being Paid by Trustee.
 2. Timely responding to objections to plan confirmation and, where necessary, prepare, file, and serve and amended plan.
- C. not applicable. See Paragraphs 7-11 and 13-14 for responsibilities required after the case is filed.

Finally, Debtor argues that although the court spent considerable time and effort creating the rubric established in Case 21-00101 (“Rubric”), it “does not accurately reflect the situation at Gillis Law.” *Id.* at 14:19-20. Debtor states the Rubric makes the following presumptions, which Mr. Gillis does not meet:

1. An attorney meets with clients prior to filing the case.
2. An attorney will help clients and file a modified plan should problems arise.
3. Legal work is performed or supervised by attorney.

Debtor argues that the Rubric used for *In re Alejandro Cervantes* and *In re Julio Martinez and Blanca Chinchilla* looked to whether Mr. Gillis charged fees in excess of the no-look fee as opposed to the fee itself. Using the Rubric, Debtor asserts that Mr. Gillis would theoretically have a \$12,800.00 hourly rate. Debtor illustrates that Mr. Gillis did not earn the attorney fee by reiterating that Mr. Gillis did not provide services under the R&R or that the work was performed unsupervised by Mr. Gillis’ staff. Debtor alleges Mr. Gillis failed to assess Debtor’ low-income situation and provide adequate legal services such as not recommending a plan modification in the First Case.

Mr. Gillis’ Limited Opposition

Mr. Gillis filed a Limited Opposition on June 5, 2020. Dckt. 123. First, Mr. Gillis states he worked with Debtor for years, and Debtor “continually got behind on their class one payments in each of the cases [Mr. Gillis] filed for them.” *Id.* at 1:19-20. Mr. Gillis proceeds by alleging that Nancy Klepac (Debtor’s Attorney”) was “pressured” to file this instant Motion by the Standing Trustee, who is “zealously attacking [him] with the help of a Northern California U.S. Trustee, Ms. Villacorta.” *Id.* at 24-26.

Mr. Gillis also alleges that the Standing Trustee engaged in “irregular use of his office” when he referred former clients to local attorneys that he likes during his audits, even in instances where “nothing [was] out of order.” *Id.* at 1:27-28-2:1-5. Mr. Gillis states one such client informed him of her experience where she was “very offended” by Standing Trustee’s examination and “finally understood where [the Standing Trustee] was going when he referred her to his attorney friends.” *Id.*

Additionally, Mr. Gillis states that Debtor’s Attorney “displays ‘hutsphah.’” *Id.* at 2:8. Mr. Gillis then details a Chapter 11 case that he collaborated with Debtor’s Attorney and her employer, Mr. Springer, where he would “‘carry the water’ for them.” *Id.* at 16:17. Mr. Gillis alleges that Debtor’s Attorney and her employer received a payment of \$60,000.00 for that case while he lost his \$50,000.00 retainer fee and at least \$25,200 in out-of-pocket expenses. Mr. Gillis notes that he later referred Debtor’ Attorney to another Chapter 11 case, where she received a payment of \$50,000.00. Although Mr. Gillis acknowledges his digression from the instant Motion, he points out that neither Debtor’s Attorney nor her employer thanked him for his referrals.

Pertaining to the instant Motion, Mr. Gillis opposes on the following grounds. First, Mr. Gillis argues that Rubric should be applied to all “unless there are unusual circumstances,” and this instant case has little to none. *Id.* at 3:1-3. Mr. Gillis then questions the fairness of the court’s consideration in granting this Motion when he has been required to pay back fees without a motion to

disgorge fees being filed in other cases. Mr. Gillis notes that he has “never seen one of [his] confirmed plans be dismissed for non-payment, or requiring a post confirmation motion.” *Id.* at 9-10. Alternatively, Mr. Gillis proposes a disgorgement in the amount of \$1,200.00, if the court believes that he did not meet with the Debtor.

Furthermore, Mr. Gillis alleges Debtor’s Attorney of overstating hours in her fee application. Mr. Gillis claims Debtor’s case is “simple” and appears to mock the work Debtor’s Attorney has performed. These include:

- A. Debtor’s Attorney spending 7.4 hours for “‘gathering facts and consulting’ is laughable.” *Id.* at 3:20-23.
- B. Debtor’s Attorney filing “clearly objectionable plans that a blind man could find objectionable.” *Id.* at 4:1-3.
- C. Rhetorically asking, “How many hours did it take to dream-up that plan?” in response to Debtor’s Attorney reducing the Debtor’s plan from sixty to thirty months. *Id.* at 4-5.
- D. Debtor’s Attorney proposing another plan with a reduced arrearage of approximately \$6,0000 as “‘that dog won’t hunt.’” *Id.* at 6-7.
- E. Debtor’s Attorney “hav[ing] the nerve to say she spent almost four hours on a fee application using a fill-in the blank form with no categories.” *Id.* at 11-12.

Mr. Gillis concludes that the court should allow a disgorgement of \$800.00 or \$1,200.00 at most for this “simple” case. He further notes that both he and Mr. Johnston gave expert opinions that “problems in confirmed cases are rare.” *Id.* at 19-21.

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)).

Disgorgement of Fees

Once a question has been raised about the reasonableness of an attorney's fee under section 329, the attorney bears the burden of establishing that the fee is reasonable." 3 COLLIER ON BANKRUPTCY P 329.01 (16th 2019). Section 329(b) provides that if "such compensation exceeds the reasonable value of any such services, the court may cancel any such agreement, or order the return of any such payment, to the extent excessive, to ... the entity that made such payment." 11 U.S.C. 329(b).

On the subject of disgorgement, Collier states:

The bankruptcy court has the authority and responsibility to look for ethical breaches when examining fee transactions. Compensation may be denied, particularly when an attorney intentionally misrepresents facts or deceives the court. The bankruptcy court may order disgorgement of fees, award costs, or impose other penalties when an attorney is found to have committed a fraud on the court or when an attorney has a conflict of interest. A bankruptcy court does not have to calculate how much the unethical conduct depleted the value of the attorney's service, but may, in its discretion, deny compensation in whole or in part. It may also order disgorgement of all fees already paid.

3 COLLIER ON BANKRUPTCY P 329.04 (16th 2019).

Local Rule 2016-1(c)(5) permits the court to "allow compensation different from the compensation provided under this Subpart any time prior to entry of a final decree, if such compensation proves to have been improvident in light of developments not capable of being anticipated at the time the plan is confirmed or denied confirmation."

DISCUSSION

Congress provides in 11 U.S.C. § 329(a) that the bankruptcy judge may review the compensation that an attorney representing a debtor receives or is owed for services rendered or to be rendered in contemplation of or in connection with a bankruptcy case. Then, the bankruptcy judge may also determine whether the compensation paid or owed to the attorney exceeds the reasonable value of any such services provided by the attorney. If the compensation exceeds the reasonable value of such services, the bankruptcy judge may cancel the agreement between the attorney and debtor or order the return of payments made to the attorney to the extent excessive. 11 U.S.C. § 329.

Reasonable Fees

As discussed in 3 Collier on Bankruptcy, ¶ 329.04[1], reasonableness of fees as determined

under 11 U.S.C. § 329(b) is a question of fact based on the circumstances of each case.

What constitutes reasonableness is a question of fact to be determined by the particular circumstances of each case. The requested compensation may be reduced if the court finds that the work done was excessive or of poor quality. [FN2] Similarly, compensation may be reduced if the court determines that the attorney took advantage of the debtor or a third party paying fees on the debtor's behalf. The reasonableness of a prepetition fee agreement between a debtor and the debtor's attorney is an inquiry within the sound discretion of the bankruptcy court. The court, however, must make explicit findings when determining the reasonableness of the subject compensation.

[FN2] *Hale v. U.S. Trustee*, 509 F.3d 1139 (9th Cir. 2007) (bankruptcy petition incomplete and erroneous requiring extensive amendments); *Bleichman v. Sapir (In re Heilpern)*, 2018 U.S. Dist. LEXIS 170252, at *7–10 (S.D.N.Y. Sept. 27, 2018) (affirming bankruptcy court's denial of compensation to attorney who failed to appear, missed deadlines, and otherwise was inattentive to the case); *In re Lee*, 495 B.R. 107, 113–14 (Bankr. D. Mass. 2013) (explaining how the court may order disgorgement of all fees when “an attorney ineptly or incompetently renders services on behalf of debtors,” or may reduce fees if the work done was of poor quality); *In re Sponhouse*, 477 B.R. 147, 154–55 (Bankr. D. Nev. 2012) (quoting treatise and finding that compensation was excessive when “services were deficient and of poor quality” and counsel's representation of debtor “reflects both a lack of competence and diligence”); *In re Gage*, 394 B.R. 184 (Bankr. N.D. Ill. 2008) (court may cancel any compensation agreement if excessive and order funds returned to the estate); *In re Laberge*, 58 C.B.C.2d 2025, 380 B.R. 277 (Bankr. D. Mass. 2008) (\$6,000 for no asset chapter 7 case with few creditors was excessive); *In re Irons*, 379 B.R. 680 (Bankr. S.D. Tex. 2007).

Factors that a bankruptcy court commonly considers in review fee applications of attorneys includes whether the 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?

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3 COLLIER ON BANKRUPTCY P 329.04 (16th 2019).

Local Rule 2016-1(c)(4) provides that "[i]f an attorney elects to be compensated pursuant to Subpart (c) but the case is dismissed prior to confirmation of a plan, absent a contrary order, the trustee shall pay to the attorney, to the extent funds are available, an administrative claim equal to fifty per cent (50%) of the total fee the debtor agreed to pay less any pre-petition retainer. The attorney shall not collect, receive, or demand additional fees from the debtor unless authorized by the Court."

Consideration of Motion

The Motion filed by Debtor was very focused and sought disgorgement of \$2,000 in fees due to Mr. Gillis being suspended and not being able to continue in the Debtor's bankruptcy case that has several years of legal proceedings remaining. In the Motion there are very specific allegations, including that Debtor met with Mr. Gillis when they had defaulted in the plan in their prior case and decided that rather than paying \$2,000 to try and modify the plan in the prior case (not an unreasonable amount of legal fees to address monetary defaults of a debtor), they elected to file a new case and have a new 60 months to reorganize (not merely the remaining months in the prior case). Motion, ¶ 11, Dckt. 107 (docket references are to this Miscellaneous File). Further, that Debtor's current counsel has agreed to finish the case for \$2,000. *Id.*, ¶ 17.

Debtor provides testimony under penalty of perjury to support the allegations in the Motion, including testifying that:

7. This was the second time we had paid Mr. Gillis' office.
8. We paid \$4,000 in a prior case.
9. When we went to get the prior case modified, we were informed that it would cost us an additional \$2,000 and Mr. Gillis suggested we should just file a new case.
10. This was our first time meeting Mr. Gillis other than the meeting at the courthouse.
11. When we got behind in this case, we believed Mr. Gillis was going to charge us an additional \$2,000 to make changes.
12. When we received news of his suspension we decided to hire The Law Offices of Timothy C. Springer instead.

Declaration, Dckt. 109.

Then, after Mr. Gillis filed his vague response asserting that Debtor asserting that Mr. Gillis should not keep the full \$4,000 fee for which an attorney must represent the debtor for the entire case, Debtor filed Reply pleadings that consisted of grossly expanding the Motion. In the seventeen (17) page "Supplemental" Brief, Debtor springs out further and more extensive relief, seeking to recover all of the \$8,000 paid to Mr. Gillis for the two bankruptcy cases in which he represented Debtor. Dckt. 118. This is not a "mere" reply to Mr. Gillis' vague opposition asserting that the Motion was vague, but sought different, quadruple in amount relief - with there being no opposition period being provided for Mr. Gillis.

The grounds are expanded to not merely seek recovery of moneys for the legal services that could not be provided, but assert that Mr. Gillis did not work on Debtor's case or earn any fees. A curious statement is made by Debtor in the "Supplemental" Brief, in which it is asserted:

The original motion and declarations were based on the general proposition that it had taken and would take more than \$2,000.00 in order to resolve all of the issues in this case. However, Mr. Gillis objected to the disgorgement and wants evidence that the fee disgorgement is appropriate. While this office holds no animosity towards Mr. Gillis and did not want to turn a request for compensation into a "witch hunt," it has now become necessary to avoid "vagueness" and set forth all of the details surrounding this situation. Some of the details relate directly to the case at bar and some reflect the general pattern and practices of Mr. Gillis and his office.

"Supplemental" Brief, p. 2:5-12.; Dckt. 118.

There is still only the "original" motion before the court. Merely because Debtor or Debtor's

counsel is “offended” that Mr. Gillis threw out a vague opposition does not alter the Motion filed or the relief requested in the Motion.

In the “Supplemental” Brief, it is now argued that Debtor made the decision to dismiss the first case and file the second case without any legal advice from Mr. Gillis. “Supplemental” Brief, p. 3, ¶ 10; Dckt. 118. However, this is contrary to the prior testimony under penalty of perjury by debtor Lorena Gonzalez of:

9. When we went to get the prior case modified, we were informed that it would cost us an additional \$2,000 and Mr. Gillis suggested we should just file a new case.

Declaration, Dckt. 109.

The “Supplemental” Brief makes further allegations that Mr. Gillis refused to cooperate with Debtor and Debtor’s current counsel to substitute into this case to replace Mr. Gillis who cannot practice law due to his State Bar suspension.

Debtor Lorena Gonzalez also provides a “Supplemental” Declaration providing testimony well beyond the Motion filed with the court. In it she provides some very troubling testimony about Mr. Gillis and the conduct of his staff. This includes the following excerpts from her “Supplemental” Declaration:

3. Between both cases that we filed with Thomas Gillis' office we only met with Mr. Gillis at the 341 meeting of creditors. a tot al of 15 minutes per case. **We never otherwise saw or spoke to him .**

4. In both cases, we really only spoke with staff members. **Prior to filing our case with Mr. Gillis' office I never met Mr. Gillis.** Our first meeting was at the court house so that we could talk to the trustee. **We were asked by members of Mr. Gillis' office to state that we had m et with Mr. Gillis prior to filing** if we were asked by the Trustee. **I refused to lie.** We were not asked.

[It is not clear if Declarant is stating that neither she nor her husband never met with Mr. Gillis, or that her husband “took care of business” and met with Mr. Gillis, but Declarant Lorena Gonzalez did not bother to until the First Meeting of Creditors.]

“Supplemental” Declaration, ¶¶ 3, 4; Dckt. 117. In the Supplemental Declaration debtor Lorena Gonzalez extolls the virtues of her current attorney.

Lorena Gonzalez then provides testimony under penalty of perjury directly contrary to her prior testimony under penalty of perjury, stating in the “Supplemental” Declaration:

11 . We were not aware that we had the option to file a modification to bring us current until we m et with our current attorney.

Id. This is directly contrary to her testimony under penalty of perjury in her original declaration that they discussed with Mr. Gillis modification of the plan in the first case and he suggested that they let the first

case be dismissed and file a new case.

In her “Supplemental” Declaration, debtor Lorena Gonzalez testifies that now, sometime between the filing of the Motion and her original Declaration on March 13, 2020 and the “Supplemental” Declaration on May 22, 2020, “conversations” with the new attorney lead Lorena Gonzalez to believe that Mr. Gillis should pay them all of the money back and he be paid nothing for his legal services in the two bankruptcy cases. (In choosing to voluntarily disclose part of her attorney-client communications, the issue arises whether the attorney-client privilege has been waived.” ^{FN. 1} Debtor Lorena Gonzalez opines that Mr. Gillis should have worked (for which additional fees would necessarily have to have been paid) on unstated modifications to the prior plan rather than Debtor starting over in a new case.

FN. 1. The judge to who is matter is assigned has over the years been baffled by comments from one of the Fresno judges that declaration and direct testimony statements are worthless, because clients sign anything the attorney puts in front of them, “even a ham sandwich.” Such is not this judge’s experience in the Sacramento and Modesto Division Courthouses, where the attorneys take (and know that the judges will enforce as appropriate) seriously their obligations and that written testimony must be accurate, truthful, and the same as oral testimony in open court, and not merely just an opportunity for the attorney to disguise arguments as testimony from a puppet.

The “Supplemental” Declaration concludes with two strange (and worrisome) statements:

23. My husband states under the penalty of perjury that he does not remember signing either declaration.

24. My husband does not speak English and we have not seen these declarations prior to today.

“Supplemental” Declaration, ¶¶ 23, 24; Dckt. 117.

First, the court is unaware of how Lorena Gonzalez can purport to hear her co-debtor husband say that he does not remember signing declarations, and then say to this court what she heard her husband say under any applicable Federal Rule of Evidence. Second, that the referenced declarations were never signed by either of the two debtors. That is something, if true, debtor and debtor’s current counsel should be acting on and not merely throwing into the end of a “Supplemental” Declaration.

Gillis Limited Opposition

In response to the “Supplemental” documents filed by Debtor, Mr. Gillis fires back at the Debtor, Debtor’s current attorney, and the Chapter 13 Trustee. He discusses other cases, other alleged mis-dealings, and the bad blood between them in the Fresno bankruptcy community. And as he expressly notes, he digresses into discussing the vacation travel of Debtor’s counsel’s law partner.

Mr. Gillis contends that under the Fee Rubric a \$1,200 disgorgement would be appropriate, which he says he can now pay.

Granting of Motion

This Motion presents the court with the sordid underbelly of the practice of bankruptcy law. A Debtor believing that they should not pay anything for the years of representation and multiple bankruptcy cases (the multiple bankruptcy case required because of the Debtor's default in plan payments - there being no asserting that it was dismissed due to Mr. Gillis failing to act). One of the debtor's providing directly conflicting testimony under penalty of perjury. Debtor and Debtor's current counsel somehow believing that a "supplemental pleading" is a document by which the motion is amended and quadruple relief can be slipped under the door by the judge.

All of the judges in this District have adopted the Fee Rubric to afford the Chapter 13 Trustee, the U.S. Trustee, Mr. Gillis, and most importantly Mr. Gillis' former clients a method consistent with the no-look fixed fee provided for in Local Bankruptcy Rule 2016-1 to address cases in which some legal services have been provided but Mr. Gillis cannot provide all of the services necessary for the full fixed fee due to his suspension from the practice of law.

Debtor, while represented by Mr. Gillis, confirmed a Chapter 13 Plan in their current bankruptcy case, No. 17-14157. However, a review of the Docket in that case indicates that periodically the Chapter 13 Trustee was having to file notices of default due to Debtor defaulting in the Plan payments. There being no hearing on motions to dismiss due to defaulted payments, it appears that Debtor cured each of those defaults.

In April 2020, Debtor filed a Motion to Confirm a Fourth Modified Plan. 17-14157; Motion, Dckt. 156. It appears that the multiple proposed Modified Plan were all filed by Debtor's current counsel, not Mr. Gillis. Looking at the Motion to Confirm the First Modified Plan, the reason for the default is stated to be:

6) The joint-debtor lost hours at her work, the debtors' vehicle broke down and they did not have the ability to take care of their regular bills and make the plan payment.

7) The joint-debtor is now working again.

8) Debtors are filing a modified plan in order to bring them current and [nothing further stated in the Motion for this paragraph]

Motion to Confirm; *Id.* The court has no reason to think that Debtor or Debtor's current counsel would make any statements in the Motion that do not comply with the certifications made as provided in Federal Rule of Bankruptcy Procedure 9011.

The court notes that a Declaration of Victor Islas, the co-debtor for whom debtor Lorena Gonzalez has testified under penalty of perjury that co-debtor Victor Islas does not speak English, from which the court infers does not read or write in English. Also, thought it is the testimony of Victor Islas, he does not sign the Declaration, but is signed by Lorena Gonzalez - not as a translator verifying that she translated it before Victor signed it, but personally. 17-14157; Victor Islas Declaration signed by Lorena Gonzalez, Dckt. 105.

From a review of the file for bankruptcy case No. 17-14157, it appears that Debtor had a long

row to hoe in light of the Chapter 13 Trustee's multiple objections to confirmation. From the Trustee's objections, it does not appear that the objections relate to the services provided by Mr. Gillis.

Additionally, the fixed, no-look fee under Local Bankruptcy Rule 2016-1 for a Chapter 13 debtor's attorney does not include modifications of plans (unless such modifications were anticipated due to an improper plan having been originally confirmed).

Under the Fee Rubric (Order, Dckt. 150) adopted for Mr. Gillis cases, once Phase III is completed - the plan is confirmed and 90 days has expired from the filing of the Notice of Filed Claims, Mr. Gillis is allowed 80% of the \$4,000 fixed fee, which is \$3,200.00. The amount of the disgorgement is \$800.

In his Response to the "Supplemental" Brief, Mr. Gillis offers that if the court believes that he did not meet with the two debtors, then the court could give Debtor an additional \$400 and he would willingly pay the \$1,200.00.

Though the court might normally be inclined to go that way, the conflicting testimony under penalty of perjury given by debtor Lorena Gonzalez mitigates against "giving" she and co-debtor Victor Islas more money. It appears that debtor Lorena Gonzalez has a "loose" appreciation of what is testimony under penalty of perjury, and she is signing declarations prepared by her current counsel for another person, her husband, making it falsely appear on the court's docket that Victor Islas is providing declaration testimony under penalty of perjury.

The Motion is granted, the court finds that application of the Fee Rubric is property, and compensation paid to Thomas O. Gillis in the amount of \$800.00 for the legal services to debtors Victor Islas and Lorena Gonzalez in bankruptcy case No. 17-14157 are disallowed as excess and he is ordered to pay the \$800.00 to Michael Meyer, the Chapter 13 Trustee in the Islas/Gonzalez bankruptcy case. The court orders the payment back to the Trustee to be administered through the Plan because the amounts in excess of what is allowed were paid by the Trustee as part of the \$2,000.00 paid Mr. Gillis for his compensation through the Plan.

The Court shall issue an order in substantially the following form:

The Court's Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing on this Matter.

Upon review of the Motion for Disgorgement of Fees, opposition stated at the hearing, considering of the pleadings in support and against, the arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and Thomas O. Gillis, Esq., shall refund immediate pay from other monies if he is not holding the monies disbursed to him by the Chapter 13 Trustee the sum of \$800.00 immediately to Chapter 13 Trustee Michael Meyer. Because these monies are being recovered pursuant to the Motion of the Debtor in this case, which was filed and prosecuted before the court entered the Order Adopting the Fee Rubric, the Chapter 13 Trustee shall deposit the \$800.00 as a payment into the Chapter 13 Plan in this case and it shall be disbursed as additional plan payment monies

pursuant to the terms of the confirmed Chapter 13 Plan.

IT IS FURTHER ORDERED that if the monies are not disbursed pursuant to the terms of the Chapter 13 Plan, this case is converted to one under Chapter 7, or this case is dismissed, Chapter 13 Trustee Michael Meyers shall transfer the \$800.00 disgorged from Mr. Gillis by this Order to the Clerk of the Bankruptcy Court as provided in the Order Adopting the Fee Rubric (Dckt. 150), who shall hold such monies pending further disbursement order from the court.

This Order constitutes a judgment (Fed. R. Civ. P. 54(a) and Fed. R. Bankr. P. 7054, 9014) and may be enforced pursuant to the Federal Rules of Civil Procedure and Federal Rule of Bankruptcy Procedure (including Fed. R. Civ. P. 69 and Fed. R. Bankr. P. 7069, 9014).

25.	<u>20-00202</u> -E-0 <u>UST-1</u>	IN THE MATTER OF THOMAS OSCAR GILLIS, FEE RUBRIC	CONTINUED MOTION UNDER 11 U.S.C. 329 AND 105 AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 2017 (THOMAS O. GILLIS) 5-26-20 <u>4</u>
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Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Thomas O. Gillis parties requesting special notice, and Office of the United States Trustee on May 26, 2020. By the court's calculation, more than the required 28 days' notice has been provided.

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

The request for additional relief is denied without prejudice.

Thomas O. Gillis is an attorney who had a very prolific practice in the Eastern District of California Bankruptcy Court for a number of years. When the undersigned judge Chief Judge first came on the bench, Mr. Gillis focused on doing Chapter 11 and 13 cases. That evolved into a Chapter 13 practice in which his office focused on providing legal services in Chapter 13 consumer restructures and Chapter 7 liquidation for Hispanic clients who had limited or nonexistent English language skills.

In the late 2010's that practice ceased when Mr. Gillis was suspended by the State Bar of California. Mr. Gillis signed a stipulation on April 30, 2019, with the State Bar for a two year suspension from the practice of law. The Chief Justice of the California Supreme Court issued her order for his suspension on November 1, 2019, with the suspension effective December 1, 2019. Mr. Gillis made a request for a continuance to allow him additional time to assist his clients in obtaining replacement counsel. Pursuant to that request the State Bar Court delayed the suspension until January 31, 2020. On January 28, 2020, Mr. Gillis made a second request for the extension of the start of his suspension until March 15, 2020, so that he could have additional time for assisting his clients. The State Bar granted a final delay in Mr. Gillis suspension, ordering that his suspension commence on February 15, 2020, and ordering Mr. Gillis not to accept any new clients. ^{FN. 1.}

FN. 1. Ruling on Chapter 13 Trustee Objections to Attorney Fee Compensation, 19-12274, Dckt. 42; Supreme Court Order of Suspension, S256770 (State Bar Court Nos. 16-O-10780 (17-O-02624; 17-O-04790)), Filed November 1, 2019; Order Filed February 7, 2020, State Bar Court of California, *In re Gillis*, 16-O-10780; Order Filed November 27, 2019, State Bar Court of California, *In re Gillis*, 16-O-10780.

With Mr. Gillis' suspension, the issue arose as to what fees Mr. Gillis was allowed to be paid for the partial representation of his clients in Chapter 13 cases, Mr. Gillis being unable to complete that representation in those cases due to his suspension. 11 U.S.C. § 329, L.B.R. 2016-1. To provide consumer attorneys and consumer debtors a cost effective method of having the court determine reasonable fees for representing debtors in Chapter 13 cases, the judges of the Eastern District of California adopted Local Bankruptcy Rule 2016-1 which allows the attorney and consumer to elect a "flat fee" (or commonly called a "no-look" fee) of \$4,000.00 in which the debtor's obligations are primarily consumer debts and \$6,000.00 in which the debtor's obligations are primarily non-consumer debts (such as debts from a sole proprietorship).

Mr. Gillis and his consumer debtor clients elected to have Mr. Gillis' fees allowed as a fixed fee as provided in Local Bankruptcy Rule 2016-1.

With Mr. Gillis suspension, there were four hundred and eighty-one (481) open Chapter 13 cases in various stages of prosecution, but which have not been completed for which the full flat fee provided under Local Bankruptcy Rule 2016-1. The provisions of Local Bankruptcy Rule 2016-1 provide that the court may allow compensation different than the fixed fee amount "if such compensation proves to have been improvident in light of developments not capable of being anticipated at the time the plan is confirmed or denied confirmation. L.B.R. 2016-1(c)(5). This commonly occurs on a "one-off" basis, and the court requires a motion for determination of fees in the same manner as an attorney requesting the allowance of fees pursuant to 11 U.S.C. § 330 or requiring the presentation of the same type of evidence as part of a motion to disallow fees filed by a debtor or other party in interest. Such practice is reasonable for such one-off issues which rarely arise in this District.

However, with Mr. Gillis' Chapter 13 debtor client cases, there could be as many as 481 motions or objections that would be required. Such would be inconsistent with the premise of Local Bankruptcy Rule 2016-1 providing the fixed fee as a device to allow financially stressed parties a cost efficient method for compliance with 11 U.S.C. § 329 (court to determine reasonableness of a debtor's attorney's fees relating to the bankruptcy if determined excessive).

To address this conundrum, the bankruptcy judges in the Eastern District conducted a joint proceeding with two exemplar cases, conducted by the Hon. Frederick E. Clement and the Hon. Rene Lastreto, with the Chief Bankruptcy Judge also participating. A Joint Ruling was issued therefrom adopting a “Fee Rubric” which set a percentage amount of the fixed fee for the legal services provided based on the status of the case. Ruling on Chapter 13 Trustee Objection to Attorney Fee Compensation; *In re Cervantes* and *In re Chinchilla*; 19-12274, Dckt. 42 (“Joint Ruling”).

The Fee Rubric has been adopted by all bankruptcy judges in this District for Mr. Gillis’ cases and ordered effective in all such cases. Adoption Order, *In re Matter of Thomas Oscar Gills*, 20-202, Dckt. 150. Mr. Gillis has agreed to the application of the Fee Rubric (rather than having 148 separate fee motions), with one issue that is the subject of an appeal to the Bankruptcy Appellate panel about whether the Phase III percentage should be 80% or 90%. *Id.*

A second important part of the Adoption Order is that any further payments to which Mr. Gillis is entitled to under the Fee Rubric are deposited directly with the Clerk of the Court and held pending order of the court how such monies are distributed to the cases in which Mr. Gillis has been overpaid or to former clients whose cases have been dismissed who overpaid Mr. Gillis. Thus, as monies for any fees allowed under the Fee Rubric are to be disbursed by the Chapter 13 Trustee, they will go directly to the Clerk of the Court for the benefit of Mr. Gillis’ former clients and their bankruptcy estates.

Mr. Gillis expressly agreed on the record to this payment of any further amounts due into a common fund for the benefit of his former clients for cases in which Mr. Gillis is overpaid under the Fee Rubric and as it may properly be adjusted for specific cases.

ADDITIONAL RELIEF REQUESTED

The court has addressed two other Omnibus Motions seeking relief from the court that are the same as the additional relief (beyond adoption of the Fee Rubric) that are requested in this Motion. Motions UST-3 and UST-4, Dckts. 20, 39. The court now considers those additional requests for relief, having issued a separate final order Adopting the Fee Rubric.

The additional relief requested by the U.S. Trustee through this Motion, UST-1, is stated as follows:

- A. Orders requiring Mr. Gillis to certify that he has performed all services contemplated under the “Rights and Responsibilities,” specifically addressing what, if any, consultation services were provided by Mr. Gillis; whether the debtor(s) has been asked to pay additional fees, including in connection with the filing of a new case; and whether the transaction was properly disclosed; and
- B. Orders requiring that Mr. Gillis provide a status of substitutions of counsel for currently unrepresented debtors in the Meyer Cases, including stating the following: (i) what efforts have been made to find substitute counsel with what results; (ii) whether substitute counsel exists; (iii) what remaining legal services need to be performed and when; (iv) whether additional fees have been requested or paid; (v) whether Mr. Gillis has complied with California Rule of Court 9.20, and if so, provide evidence of the same as to each debtor; and (vi) if substitute counsel has not

been obtained, explain.

Motion, p. 9:9-20; Dckt. 4.

The court has addressed the above requested relief in its rulings on Motions UST-3 and UST-4, each of which requested the same relief. The court now restates its ruling from the other two motions (UST-3 and UST-4), incorporating it here.

In considering this request, the court begins with the Fee Rubric itself. As discussed in this and the related proceedings, this court and the bankruptcy judges in this District have adopted the Fee Rubric as a refinement of the fixed fee provided in Local Bankruptcy Rule 2016-1. As set forth in the Joint Decision, the judges recognize that the Fee Rubric is subject to adjustment on a case by case basis. But the Fee Rubric determines the reasonable, non-excessive fees in general for the stage of the representation that Mr. Gillis was able to get his former client.

It is important to remember that the U.S. Trustee and Mr. Gillis were able to provide for any further payments to which Mr. Gillis is entitled to under the Fee Rubric to be deposited into a fund for the benefit of Mr. Gillis' former clients. This is a now self-executing execution or offset against Mr. Gillis' obligation to pay back monies he has been overpaid for services. The court's Order (Dckt. 150) requires that said payments from the Chapter 13 Trustees shall be disbursed directly with the Clerk of the Court and held pending order of the court how such monies are distributed to the cases in which Mr. Gillis has been overpaid or to former clients whose cases have been dismissed who overpaid Mr. Gillis. Thus, as monies for any fees allowed under the Fee Rubric are to be disbursed by the Chapter 13 Trustee, they will go directly to the Clerk of the Court for the benefit of Mr. Gillis' former clients and they bankruptcy estates.

The Fee Rubric has been established to provide for a determination of reasonable, non-excessive fees based upon objective factors--the status of the bankruptcy case. These are consistent with Local Bankruptcy Rule 2016-1(c)(4) which has a similar provision in the event that a bankruptcy case is dismissed prior to confirmation of a Chapter 13 plan.

Given that the Fee Rubric is based on objective factors, the court concludes that requiring the preparation of four hundred and eighteen (418) statements that Mr. Gillis has not provided all of the legal services required under the Rights and Responsibilities statements filed in each of the four hundred and eighteen cases is at this time impractical. The Fee Rubric provides for reducing the fees allowed that are reasonable and not excessive (subject to a case by case specific adjustment) for those cases that Mr. Gillis cannot provide all of the required services for Mr. Gillis to be entitled to the full fixed fee.

The court cannot identify any benefit in the court fulfilling its obligations arising under the Bankruptcy Code, including 11 U.S.C. § 329, to determine the reasonable, non-excessive fees that Mr. Gillis is entitled to as a matter of Federal, Bankruptcy Law. It is indisputable that Mr. Gillis has not been able to provide all of the required services.

With respect to the second request, ordering Mr. Gillis to provide hundreds and hundreds of reports on the status of the substitutions and hold up fee payments to the Clerk of the Court under the Fee Rubric, the court views this as discovery that the U.S. Trustee can undertake, as the U.S. Trustee deems appropriate.

With respect to substitutions, it has been represented to this court that Mark Hannon, Esq., who is identified as the current shareholder of Latino Law, Inc., is to substitute in as counsel in the place of Mr. Gillis in the cases pending in this District. It has also been reported that Mr. Hannon has hired Mr. Gillis as a paralegal who is working at Latino Law, Inc. for Mr. Hannon.

In the pleadings filed in connection with the Joint Decision proceeding to establish the Fee Rubric, Mr. Gillis filed a response stating:

Respondent has attached a list of the pending cases that are yet unconfirmed (Exhibit C). Mark J. Hannon has agreed to substitute into those cases and protect them to confirmation and beyond (see Agreement of Mark J. Hannon, Exhibit B).

19-12274; Gillis Response, Dckt. 29. The Exhibit C reference in the above is filed in case 19-12274, Dckt. 33, and identifies forty-two (42) Chapter 13 cases in which Mr. Hannon has agreed to be substitute counsel in the place of Mr. Gillis.

Provided as Exhibit B referenced above is the Letter Agreement for Mr. Hannon to substitute in as counsel in Mr. Gillis cases. The Letter Agreement states:

This will confirm that I agree to substitute in as attorney on your confirmed Chapter 13 cases as soon as proper substitutions can be signed and filed. We have been friends for 30 years. I will do this in honor of our friendship.

...

I will service them free and will only apply for a fee if a particular case needs considerable legal work.

Also there are less than 35 cases that remain unconfirmed. I will substitute in on those cases and prosecute them to discharge. I may apply for a fee if the case requires a great deal of legal work.

Id., Exhibit B. This Letter Agreement appears to say that Mark Hannon has agreed to (as this court understood from representations at hearings) to substitute in on all cases, not merely those listed on Exhibit C.

Mr. Gillis confirms this in his Declaration filed with the Gillis Response in 19-12274, in which he testifies:

16. Mark Hannon has agreed to service my Chapter 13 cases that have paid in full, without a fee (see list of unconfirmed Gillis cases to be taken over by Mark Hannon, Exhibit B).

17. I have attached a list of the pending cases that are yet unconfirmed (Exhibit C). Mark J. Hannon has agreed to substitute into those cases and protect them to confirmation and beyond (see Agreement of Mark J. Hannon, Exhibit B).

Id.; Declaration, p. 4:11-18, Dckt. 30.

It appears that there is little utility in having Mr. Gillis prepare a report as to the status of the

substitutions, as Mr. Hannon and Mr. Gillis have already provided the court and all parties in interest as to who is the attorney who is to be substituting in (assuming that Mr. Gillis' former clients choose to accept Mr. Hannon as their counsel).

The Trustee also wants the court to order that Mr. Gillis provide information about fees, what has been requested, what has been paid to whom, and the like. This is in the nature of discovery to be taken by a party in interest as part of determining what, if any, cases should be the subject of a case by case requested adjustment to the Fee Rubric.

The court leaves discovery to be conducted by the U.S. Trustee and not undertake "judicial discovery."

The court denies without prejudice this other requested relief.

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

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

The Omnibus Motion of the United States Trustee, DCN: UST-1, having been presented to the court, the Court having Adopted the Fee Rubric for the pending Chapter 13 cases filed by Thomas O. Gillis by separate order of this court (Dckt. 150) in this Contested Matter, and upon review of the US Trustee's Omnibus Motion, the arguments of counsel, the files in this case, the Fee Rubric adopted in this District to determine the allowable, compensation for Thomas O. Gillis as counsel for the debtor in the Chapter 13 cases pursuant to Local Bankruptcy Rule 2016-1 and 11 U.S.C. § 329 for each of the Chapter 13 cases, and good cause appearing.

IT IS ORDERED that the additional relief requested in the Omnibus Motion (UST-1) in addition to the adoption of the Fee Rubric is denied without prejudice.

The court has issues this as a separate final order in this Contested Matter as provided in Federal Rule of Civil Procedure 54(b) and Federal Rule of Bankruptcy Procedure 7054 for the additional relief not the subject of the separate final order Adopting the Fee Rubric, Dckt. 150, which is a separate and final order, and not part of this order or the ruling on the additional relief requested in this Motion.

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 (*pro se*), Chapter 13 Trustee, and creditors on May 26, 2020. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion Under 11 U.S.C. §§ 329, 105 and Federal Rule of Bankruptcy Procedure 2017 has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The hearing on the Motion was continued to July 14, 2020 by an order of the court entered on June 23, 2020, Dckt. 104.

The Motion Under 11 U.S.C. §§ 329, 105 and Federal Rule of Bankruptcy Procedure 2017 is granted and Thomas O. Gillis is allowed compensation of \$2,400.00 for the representation of Homer and Maria Mora, the Debtors in Bankruptcy Case No. 19-11428, and disallowed for all amount in excess thereof.

Any monies payable under the Chapter 13 Plan to Mr. Gillis for the \$2,400.00 allowed above that are to be paid to Mr. Gillis through the Chapter 13 Plan shall be deposited by the Chapter 13 Trustee with the Clerk of the Bankruptcy Court as provided in the Order Adopting Fee Rubric (Dckt. 150), with the Clerk holding such monies pending further order of the court.

Thomas O. Gillis is an attorney who had a very prolific practice in the Eastern District of California Bankruptcy Court for a number of years. When the undersigned judge Chief Judge first came on the bench, Mr. Gillis focused on doing Chapter 11 and 13 cases. That evolved into a Chapter 13 practice in which his office focused on providing legal services in Chapter 13 consumer restructures and

Chapter 7 liquidation for Hispanic clients who had limited or nonexistent English language skills.

In the late 2010's that practice ceased when Mr. Gillis was suspended by the State Bar of California. Mr. Gillis signed a stipulation on April 30, 2019, with the State Bar for a two year suspension from the practice of law. The Chief Justice of the California Supreme Court issued her order for his suspension on November 1, 2019, with the suspension effective December 1, 2019. Mr. Gillis made a request for a continuance to allow him additional time to assist his clients in obtaining replacement counsel. Pursuant to that request the State Bar Court delayed the suspension until January 31, 2020. On January 28, 2020, Mr. Gillis made a second request for the extension of the start of his suspension until March 15, 2020, so that he could have additional time for assisting his clients. The State Bar granted a final delay in Mr. Gillis suspension, ordering that is commenced on February 15, 2020, and ordering Mr. Gillis not to accept any new clients. ^{FN. 1.}

FN. 1. Ruling on Chapter 13 Trustee Objections to Attorney Fee Compensation, 19-12274, Dckt. 42; Supreme Court Order of Suspension, S256770 (State Bar Court Nos. 16-O-10780 (17-O-02624; 17-O-04790)), Filed November 1, 2019; Order Filed February 7, 2020, State Bar Court of California, *In re Gills*, 16-O-10780; Order Filed November 27, 2019, State Bar Court of California, *In re Gills*, 16-O-10780.

REVIEW OF MOTION

The Motion, UST-2, filed by the U.S. Trustee relates to the Homer Mora and Maria Mora bankruptcy case, 19-11428. Dckt. 13. In the *Mora* case, Mr. Gillis represented the debtors and obtained an order confirming their Chapter 13 Plan on June 11, 2019. Mr. Gillis had been paid a \$2,000.00 pre-petition retainer and an additional fee of \$2,000.00 is to be paid under the Plan based on the election to take the no-look fee.

In June 2019, Mr. Gillis had signed the stipulation with the State Bar and then in December 2019, Mr. Gillis filed a Notice of Suspension in the *Mora*'s bankruptcy case.

Mr. Gillis was ultimately suspended in February 2020. The U.S. Trustee reports that as of the May 26, 2020 filing of the Motion UST-2, no new attorney has substituted in for Mr. Gillis in the *Mora* case.

The prayer for relief in this Motion is stated as follows:

The above represented facts require that the Court review the Debtors' transactions with Mr. Gillis, and order appropriate relief, including, but not limited to, disgorgement of all fees paid to Mr. Gillis, and that these fees be returned to the Debtors. Additionally, the Court should issue an order reducing Mr. Gillis's agreed-upon fee to the extent that the Court finds a \$4,000 retainer unreasonable and excessive under the circumstances of this case, pursuant to 11 U.S.C. § 329(b).

Motion, p. 5:5-11; Dckt. 13.

As stated, it appears that the U.S. Trustee is referring this matter for the court to review, prosecute, and then adjudicate fees different from in the Fee Rubric. It may be that what is intended is to say that the U.S. Trustee will undertake discovery in this Contested Matter, assemble what the U.S. Trustee ascertains to be the relevant evidence and applicable law, and then state with particularity (Fed. R. Bankr. P. 9013) specific relief requested, such as what amounts of the Fee Rubric fee amount should be disallowed.

History of Debtor's Case

- A. Debtor filed a voluntary Chapter 13 case on April 9, 2019 ("Petition Date") with Mr. Gillis as the counsel on record.
- B. Mr. Gillis received \$2,000.00 from Debtor March 20, 2019 of the \$4,000.00 charged for the case. Mr. Gillis chose to receive compensation using the "opt-in procedure" in LBR 2016-1.
- C. Mr. Gillis executed a "Rights and Responsibilities" document.
- D. Confirmation of the Plan was delayed because Debtor failed to appear at the 341 Meeting of Creditors, prompting Chapter 13 Trustee to file a Motion to Dismiss. In response, Mr. Gillis and Debtor stated under penalty of perjury Debtor was advised not to apply because Mr. Gillis was vacationing outside the country.
- E. Debtor's Plan was confirmed on June 11, 2019 and the "opt-in fees" were approved.
- F. Mr. Gillis knew of his suspension as of April 30, 2019 when he signed the stipulation with the California State Bar. This stipulation was signed before confirmation of Debtor's Plan.
- G. Mr. Gillis filed a Notice of Suspension in the case on December 1, 2019. As of May 20, 2020, Mr. Gillis is still the attorney of record and no substitution of counsel has been filed.

Response of Thomas O. Gillis

Mr. Gillis filed a Response on June 9, 2020, Dckt. 64. Mr. Gillis's arguments are summarized as follows:

- A. The Mandatory Injunction the U.S. Trustee requests in UST-2 is not favored by courts and requires a high standard of proof from the plaintiff.
- B. Movant does not allege she will prevail on the merits after Mr. Gillis gives his information but only "will consider whether there are factors in each case which require adjustment of the formula."

- C. The Movant is not justified or has failed to meet the burden of proof necessary for the court to order Mr. Gillis to thoroughly inspect and provide sworn testimony on at least 400 Chapter 13 case files.
- D. Regarding *In re Cervantes*, 2020 Bankr.Lexis 864 (Bankr. E.D. Cal. March 31, 2020), Mr. Gillis states Judge Lastreto ordered him to disgorge \$600.00, which he complied with because he did not “have the energy to fight every battle.” Mr. Gillis also cited to *In re Islas Gonzales* and *In re Lopez* (no disgorgement was awarded) as well which he states gives the U.S. Trustee no basis to carry out a “fishing expedition” through 300 more cases in seeking disgorgement. The cases do not justify a Mandatory Injunction from the court.
- E. Movant does not allege or prove irreparable damage will occur if the court does not issue a Mandatory Injunction and consequently fails to meet her burden of proof.
- F. The Mandatory Injunction would cause irreparable harm to Mr. Gillis because he already has medical problems and is sheltering in place from COVID-19 and could not survive an infection, he has no staff to help him move the files from storage, has suffered weight loss from stress, examination of the files would take an unreasonable amount of time, and medical conditions prevent Mr. Gillis from completing the work.
- G. Mr. Gillis reserves his Fifth Amendment right to decline to answer questions.
- H. The Mandatory Injunction to supply State Bar Rule 9.20 is outside the core proceeding according to the *Northern Pipeline Case* and *Law v. Siegal*.
- I. There is no precedent for a Mandatory Injunction, 11 U.S.C. section 349 does not authorize a mandatory injunction, and section 105 cannot be used to expand the law. Furthermore, this is a non-core matter.

U.S. Trustee’s Reply

The U.S. Trustee filed a Reply to Mr. Gillis’s Response on June 15, 2020, Dckt. 87. The U.S. Trustee’s arguments are summarized as follows:

- A. The Response is confusing and erroneously describes court proceedings, and makes misstatements and unsupported assertions.
- B. It is unclear to the U.S. Trustee why Mr. Gillis characterizes the instant Motion as one for a mandatory injunction, and will continue to stand by the authorities set forth in the Motion and Memorandum of Points and Authorities.

- C. Mr. Gillis cannot make a blanket reservation of the Fifth Amendment.
- D. Whether Mr. Gillis has complied with the State Bar Requirements is a matter this court has jurisdiction over.
- E. Mr. Gillis's Response does not address whether he performed the legal services in the Rights and Responsibilities Agreement and whether he can provide a status of substitutions.

Supplemental Response of Thomas O. Gillis

Mr. Gillis filed a Supplemental Response on June 16, 2020, Dckt. 89. Mr. Gillis's arguments are summarized as follows:

- A. The U.S. Trustee's Motion is vague and uncertain and does not clearly state why there should be a departure from the Rubric set out in the March 31, 2020 ruling.
- B. Because Debtor resides in Fresno, the case should be heard by a judge there. Mr. Gillis states this filing "may be an attempt at 'judge shopping' which is disfavored by the [c]ourts."
- C. Mr. Gillis states he handled the case properly and there is no basis for returning the \$4,000.00 fee.
- D. Mr. Gillis alleges Mr. Meyer is attacking minorities directly through him and cutting off their representation to the court because of racial bias. Mr. Gillis is contemplating filing a motion to conduct a Rule 2004 examination of Trustee Michael Meyer for violations of Title VI.

U.S. Trustee's Response and Reservation of Rights Regarding Mr. Gillis's Supplemental Response

The U.S. Trustee filed a Response and Reservation of Rights Regarding Mr. Gillis's Supplemental Response on July 7, 2020. The U.S. Trustee's arguments are summarized as follows:

- A. Mr. Gillis misinterprets the Fee Rubric Decision and disagrees the Motion is vague and does not state a basis for departure from the Fee Rubric.
- B. Venue appears to be proper within this district because Chief Judge Sargis "will make all rulings, in all bankruptcy cases for all Divisions of this District notwithstanding the bankruptcy case to which the fees relate being assigned to a different bankruptcy judge . . ." Mr. Gillis does not have factual and legal support to challenge venue.
- C. Mr. Gillis does not rebut the allegations in the instant Motion regarding the administration of Debtor's case and lack of substitute counsel.

- D. Mr. Gillis makes other allegations that are irrelevant to the instant Motion and unsupported by facts or law.

RULING

In considering this request, the court begins with the Fee Rubric itself. As discussed in this and the related proceedings, this court and the bankruptcy judges in this District have adopted the Fee Rubric as a refinement of the fixed fee provided in Local Bankruptcy Rule 2016-1. The Fee Rubric determines the reasonable, non-excessive fees in general for the stage of the representation that Mr. Gillis was able to get his former client. As set forth in the Joint Decision, the judges recognize that the Fee Rubric is subject to adjustment on a case by case basis.

The court has addressed Mr. Gillis' opposition based on jurisdiction, this being a core matter proceeding, the court not ordering certifications, and other matters in the Rulings on the U.S. Trustee's Motions UST-3 and UST-4. It appears that much of what Mr. Gillis argues against was requested in those motions and not deleted when he "cut and pasted" analysis and argument from his responses in those pleadings to this one. Mr. Gillis has also addressed the issue of "venue," recognizing and accepting that these Fee Rubric matters will be determined by the Chief Bankruptcy Judge for the District.

The Joint Ruling was issued therefrom establishing a "Fee Rubric" which set a percentage amount of the fixed fee for the legal services provided based on the status of the case. Ruling on Chapter 13 Trustee Objection to Attorney Fee Compensation; *In re Cervantes* and *In re Chinchilla*; 19-12274, Dckt. 42 ("Joint Ruling"). The Fee Rubric has been adopted by all bankruptcy judges in this District for Mr. Gillis' cases and ordered effective in all such cases. Order, *In re Matter of Thomas Oscar Gills*, 20-202, Dckt. 150. Mr. Gillis has agreed to the application of the Fee Rubric (rather than having 148 separate fee motions), with one issue that is the subject of an appeal to the Bankruptcy Appellate panel about whether the Phase III percentage should be 80% or 90%. *Id.*

The Joint Ruling adopted by all Bankruptcy Judges in this District established the following Fee Rubric for determination of Mr. Gillis' fees in his Chapter 13 cases:

Phase	Services Provided	Aggregate Percentage of No-Look Fee Earned
Phase I	Pre-petition through meeting of creditors	30%
Phase II	Meeting of Creditors through initial confirmation	60%
Phase III	Confirmation to 90 days after Notice of Filed Claims	80% ^{FN. 2}

Phase IV	Discharge, closure, certifications, necessary lien clearances	100%
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 FN. 2. It is this percentage amount that Mr. Gillis has identified as being the subject of the pending appeal before the Bankruptcy Appellate Panel, with Mr. Gillis asserting it should be 90%.

In the Mora Case, Mr. Gillis has obtained for the Debtor a confirmed Chapter 13 Plan. 19-11428; Order Confirming filed on June 11, 2019, Dckt. 29. The Notice of Filed Claims was filed on November 20, 2019. In the Mora Case, the deadline for filing government proofs of claim did not expire until October 7, 2019. *Id.*; Notice of Chapter 13 Bankruptcy Case, Dckt. 9. Ninety (90) days after November 20, 2019, is March 21, 2020 - well after Mr. Gillis' February 15, 2020 suspension.

Mr. Gillis' allowed compensation for the legal services in the Mora case computed under the Fee Rubric is \$2,400.00 (60% x \$4,000 fixed fee). Mr. Gillis has been overpaid \$1,600.00 and the court orders him to repay (disgorged) the \$1,600.00 to the Clerk of the Bankruptcy Court to be held pending further order of the court as provided in the Order Adopting Fee Rubric (Dckt. 150).

Issue of Substitution of Counsel

The U.S. Trustee raises here, as the U.S. Trustee has in connection with other motions, that with Mr. Gillis' suspension Homer and Maria Mora, former debtor clients of Mr. Gillis, are unrepresented, no attorney substituting in. The U.S. Trustee points out that Mr. Gillis has represented, and obtained delays in the commencement of his suspension based on him working to get attorneys substituted in for his then soon to be former clients.

With respect to substitutions, it has been represented to this court that Mark Hannon, Esq., who is identified as the current shareholder of Latino Law, Inc., is to substitute in as counsel in the place of Mr. Gillis in the cases pending in this District. It has also been reported that Mr. Hannon has hired Mr. Gillis as a paralegal who is working at Latino Law, Inc. for Mr. Hannon.

In the pleadings filed in connection with the Joint Decision proceeding to establish the Fee Rubric, Mr. Gillis filed a response stating:

Respondent has attached a list of the pending cases that are yet unconfirmed (Exhibit C). Mark J. Hannon has agreed to substitute into those cases and protect them to confirmation and beyond (see Agreement of Mark J. Hannon, Exhibit B).

19-12274; Gillis Response, Dckt. 29. The Exhibit C reference in the above is filed in case 19-12274, Dckt. 33, and identifies forty-two (42) Chapter 13 cases in which Mr. Hannon has agreed to be substitute counsel in the place of Mr. Gillis.

Provide as Exhibit B reference above is the Letter Agreement for Mr. Hannon to substitute in as counsel in Mr. Gillis cases. The Letter Agreement states:

This will confirm that I agree to substitute in as attorney on your confirmed Chapter 13 cases as soon as proper substitutions can be signed and filed. We have been friends for 30 years. I will do this in honor of our friendship.

...

I will service them free and will only apply for a fee if a particular case needs considerable legal work.

Also there are less than 35 cases that remain unconfirmed. I will substitute in on those cases and prosecute them to discharge. I may apply for a fee if the case requires a great deal of legal work.

Id., Exhibit B. This Letter Agreement appears to say that Mark Hannon has agreed to (as this court understood from representations at hearings) to substitute in on all cases, not merely those listed on Exhibit C.

Mr. Gillis confirms this in his Declaration filed with the Gillis Response in 19-12274, in which he testifies:

16. Mark Hannon has agreed to service my Chapter 13 cases that have paid in full, without a fee (see list of unconfirmed Gillis cases to be taken over by Mark Hannon, Exhibit B).

17. I have attached a list of the pending cases that are yet unconfirmed (Exhibit C). Mark J. Hannon has agreed to substitute into those cases and protect them to confirmation and beyond (see Agreement of Mark J. Hannon, Exhibit B).

Id.; Declaration, p. 4:11-18, Dckt. 30.

It appears that the focus concerning substitutions has been dialed in by Mr. Hannon and Mr. Gillis. The court does not consider this to warrant a reduction of the compensation from that computed under the Fee Rubric

The Court shall issue an order in substantially the following form:

The Court's Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing on this Matter.

Upon review of the Motion for Disgorgement of Fees, opposition stated at the hearing, considering of the pleadings in support and against, the arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and is granted and Thomas O. Gillis is allowed compensation of \$2,400.00 for the representation of Homer and Maria Mora, the Debtors in Bankruptcy Case No. 19-11428, and disallowed for all amount in excess thereof.

Any monies payable under the Chapter 13 Plan to Mr. Gillis for the \$2,400.00 allowed above that are to be paid to Mr. Gillis through the Chapter 13

Plan shall be deposited by the Chapter 13 Trustee Michael Meyer with the Clerk of the Bankruptcy Court as provided in the Order Adopting Fee Rubric (Dckt. 150), with the Clerk holding such monies pending further order of the court.

This Order constitutes a judgment (Fed. R. Civ. P. 54(a) and Fed. R. Bankr. P. 7054, 9014) and may be enforced pursuant to the Federal Rules of Civil Procedure and Federal Rule of Bankruptcy Procedure (including Fed. R. Civ. P. 69 and Fed. R. Bankr. P. 7069, 9014).

27. [20-00202-E-0](#) **IN THE MATTER OF THOMAS** **MOTION UNDER 11 U.S.C. 329 AND**
[UST-3](#) **OSCAR GILLIS, FEE RUBRIC** **105 AND FEDERAL RULE OF**
BANKRUPTCY PROCEDURE 2017
5-29-20 [20]

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Thomas O. Gillis parties requesting special notice, and Office of the United States Trustee on May 29, 2020. By the court's calculation, more than the required 28 days' notice has been provided.

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

The Motion requesting the application of the Fee Rubric to all of the pending Chapter 13 cases filed by Thomas O. Gillis assigned to Chapter 13 David Cusick is granted, the amount of compensation fees in excess of that allowed by the Fee Rubric for those cases determined, and Thomas O. Gillis ordered to return (disgorgement) the excessive fees, which shall be paid directly to the Clerk of the Bankruptcy Court, to be held pending further order of the court for the disbursement thereof to Mr. Gillis' former clients and their respective bankruptcy estates.

All other requested relief is denied without prejudice.

Thomas O. Gillis is an attorney who had a very prolific practice in the Eastern District of California Bankruptcy Court for a number of years. When the undersigned judge Chief Judge first came on the bench, Mr. Gillis focused on doing Chapter 11 and 13 cases. That evolved into a Chapter 13 practice in which his office focused on providing legal services in Chapter 13 consumer restructures and Chapter 7 liquidation for Hispanic clients who had limited or nonexistent English language skills.

In the late 2010's that practice ceased when Mr. Gillis was suspended by the State Bar of California. Mr. Gillis signed a stipulation on April 30, 2019, with the State Bar for a two year suspension from the practice of law. The Chief Justice of the California Supreme Court issued her order for his suspension on November 1, 2019, with the suspension effective December 1, 2019. Mr. Gillis made a request for a continuance to allow him additional time to assist his clients in obtaining replacement counsel. Pursuant to that request the State Bar Court delayed the suspension until January 31, 2020. On January 28, 2020, Mr. Gillis made a second request for the extension of the start of his suspension until March 15, 2020, so that he could have additional time for assisting his clients. The State Bar granted a final delay in Mr. Gillis suspension, ordering that his suspension commence on February 15, 2020, and ordering Mr. Gillis not to accept any new clients. ^{FN. 1.}

FN. 1. Ruling on Chapter 13 Trustee Objections to Attorney Fee Compensation, 19-12274, Dckt. 42; Supreme Court Order of Suspension, S256770 (State Bar Court Nos. 16-O-10780 (17-O-02624; 17-O-04790)), Filed November 1, 2019; Order Filed February 7, 2020, State Bar Court of California, *In re Gills*, 16-O-10780; Order Filed November 27, 2019, State Bar Court of California, *In re Gills*, 16-O-10780.

With Mr. Gillis' suspension, the issue arose as to what fees Mr. Gillis was allowed to be paid for the partial representation of his clients in Chapter 13 cases, Mr. Gillis being unable to complete that representation in those cases due to his suspension. 11 U.S.C. § 329, L.B.R. 2016-1. To provide consumer attorneys and consumer debtors a cost effective method of having the court determine reasonable fees for representing debtors in Chapter 13 cases, the judges of the Eastern District of California adopted Local Bankruptcy Rule 2016-1 which allows the attorney and consumer to elect a "flat fee" (or commonly called a "no-look" fee) of \$4,000.00 in which the debtor's obligations are primarily consumer debts and \$6,000.00 in which the debtor's obligations are primarily non-consumer debts (such as debts from a sole proprietorship).

Mr. Gillis and his consumer debtor clients elected to have Mr. Gillis' fees allowed as a fixed fee as provided in Local Bankruptcy Rule 2016-1.

With Mr. Gillis suspension there were four hundred and eighty-one (481) open Chapter 13 cases in various stages of prosecution, but which have not been completed for which the full flat fee provided under Local Bankruptcy Rule 2016-1. The provisions of Local Bankruptcy Rule 2016-1 provide that the court may allow compensation different than the fixed fee amount "if such compensation proves to have been improvident in light of developments not capable of being anticipated at the time the plan is confirmed or denied confirmation. L.B.R. 2016-1(c)(5). This commonly occurs on a "one-off" basis, and the court requires a motion for determination of fees in the same manner as an attorney requesting the allowance of fees pursuant to 11 U.S.C. § 330 or requiring the presentation of the same type of evidence as part of a motion to disallow fees filed by a debtor or other party in interest. Such practice is reasonable for such one-off issues which rarely arise in this District.

However, with Mr. Gillis' Chapter 13 debtor client cases, there could be as many as 481 motions or objections that would be required. Such would be inconsistent with the premise of Local Bankruptcy Rule 2016-1 providing the fixed fee as a device to allow financially stressed parties a cost efficient method for compliance with 11 U.S.C. § 329 (court to determine reasonableness of a debtor's attorney's fees relating to the bankruptcy if determined excessive).

To address this conundrum, the bankruptcy judges in the Eastern District conducted a joint proceeding with two exemplar cases, conducted by the Hon. Frederick E. Clement and the Hon. Rene Lastreto, with the Chief Bankruptcy Judge also participating. A Joint Ruling was issued therefrom adopting a "'Fee Rubric" which set a percentage amount of the fixed fee for the legal services provided based on the status of the case. Ruling on Chapter 13 Trustee Objection to Attorney Fee Compensation; *In re Cervantes* and *In re Chinchilla*; 19-12274, Dckt. 42 ("Joint Ruling").

The Fee Rubric has been adopted by all bankruptcy judges in this District for Mr. Gillis' cases and ordered effective in all such cases. Adoption Order, *In re Matter of Thomas Oscar Gills*, 20-202, Dckt. 150. Mr. Gillis has agreed to the application of the Fee Rubric (rather than having 148 separate fee motions), with one issue that is the subject of an appeal to the Bankruptcy Appellate panel about whether the Phase III percentage should be 80% or 90%. *Id.*

A second important part of the Adoption Order is that any further payments to which Mr. Gillis is entitled to under the Fee Rubric are deposited directly with the Clerk of the Court and held pending order of the court how such monies are distributed to the cases in which Mr. Gillis has been overpaid or to former clients whose cases have been dismissed who overpaid Mr. Gillis. Thus, as monies for any fees allowed under the Fee Rubric are to be disbursed by the Chapter 13 Trustee, they will go directly to the Clerk of the Court for the benefit of Mr. Gillis' former clients and they bankruptcy estates.

Mr. Gillis expressly agreed on the record to this payment of any further amounts due into a common fund for the benefit of his former clients for cases in which Mr. Gillis is overpaid under the Fee Rubric and as it may properly be adjusted for specific cases.

The Joint Ruling adopted by all Bankruptcy Judges in this District established the following Fee Rubric for determination of Mr. Gillis' fees in his Chapter 13 cases:

Phase	Services Provided	Aggregate Percentage of No-Look Fee Earned
Phase I	Pre-petition through meeting of creditors	30%
Phase II	Meeting of Creditors through initial confirmation	60%
Phase III	Confirmation to 90 days after Notice of Filed Claims	80% ^{FN. 2}

Phase IV	Discharge, closure, certifications, necessary lien clearances	100%
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 FN. 2. It is this percentage amount that Mr. Gillis has identified as being the subject of the pending appeal before the Bankruptcy Appellate Panel, with Mr. Gillis asserting it should be 90%.

**OMNIBUS MOTION FOR APPLICATION OF FEE RUBRIC
 TO GILLIS CHAPTER 13 CASES FOR WHICH
 DAVID P. CUSICK IS THE CHAPTER 13 TRUSTEE**

Consistent with the spirit and intent of Local Bankruptcy Rule 2016-1 and the Fee Rubric adopted by the bankruptcy judges in this District, the U.S. Trustee has filed an Omnibus Motion (Dckt. 20) for the court to apply the Fee Rubric to all of Mr. Gillis' pending Chapter 13 cases that are assigned to Chapter 13 Trustee David Cusick. This provides the court, Mr. Gillis, the U.S. Trustee with a single focused proceeding in which the Fee Rubric can be applied to Mr. Cusick's Chapter 13 cases. Filed as Exhibit A in support of the Motion is a chart identified as having been prepared by Mr. Cusick's office computing the fees pursuant to the Fee Rubric.

The Omnibus Motion then requests further relief. The U.S. Trustee states that the Fee Rubric is subject to modification on a case by case basis depending upon specific facts and circumstances in a specific case.

First, the U.S. Trustee requests that the court order Mr. Gillis certify under penalty of perjury in each of the eighty-four (84) Chapter 13 cases assigned to Chapter 13 Trustee Cusick that he has "performed all services contemplated under the 'Rights and Responsibilities' [statement filed by debtor and debtor's counsel setting forth attorney fee agreement], specifically addressing what, if any, consultation services were provided by Mr. Gillis; whether the debtor(s) has been asked to pay additional fees, including in connection with the filing of a new case; and whether the transaction was properly disclosed." ^{FN. 3}

 FN. 3. As discussed further below, the reason that the Fee Rubric is necessary is because Mr. Gillis cannot perform all of the services contemplated under the Rights and Responsibilities (EDC Form 3-096), thus such a requirement appears to provide no additional information.

Next, the U.S. Trustee seeks to have the court order Mr. Gillis provide a status report of substitutions for his former clients who have not yet obtained new counsel, which information is to include:

- A. What efforts have been made to find substitute counsel;
- B. Whether substitute counsel exists;

- C. What remaining legal services need to be performed and when;
- D. Whether additional fees have been requested or paid;
- E. Whether Mr. Gillis has complied with State Bar Rule 9.02, and if so, provide evidence of the same as to each debtor; and
- F. Explain why substitute counsel has not been obtained.

Motion, p. 4:3-9; Dckt. 20.

Then, only after the court has received the additional information that can be “discovered” from such information from Mr. Gillis, that the court adjust the Fee Rubric (presumably for each and every of the 84 cases assigned to Mr. Cusick).

The U.S. Trustee then state that she reserves the right to seek additional relief based upon what she “discovers” from the responses given by Mr. Gillis pursuant to the order of the court.

Additional Factors Identified by the U.S. Trustee

In the Motion, the U.S. Trustee states with particularity (Fed. R. Bankr. P. 9013) specific grounds for the court to consider in connection with the relief requested. These grounds include the following (identified by the paragraph number in the Motion).

Cases in Which Debtors Are Unrepresented

14. Thus, as early as April 30, 2019, Mr. Gillis was aware that he would be suspended and would not be able to provide services to chapter 13 debtors whose cases normally last three to five years. *Id.* [See Spyksma Decl., ¶¶ 4, 6 and Exhibit D, p. 4 and Exhibit M, p. 25.]

15. To date, of the 84 Cusick Cases, 76 of those have not had a substitution of attorney filed to replace Mr. Gillis. Vargas Decl., ¶ 3. Mr. Gillis was aware of the impact his suspension would have on his clients, and in fact sought relief from the State Bar to delay the effective date of his suspension so that he could find substitute counsel for debtors who have cases lasting three to five years. *See* Exhibit C, Addendum C.

Issues of Mr. Gillis’ Underperformance

17. Issues of Mr. Gillis’ underperformance have arisen as set forth below.

- a. *In re Cervantes*, Case No. 18-10306-B-13. In this case, the debtor required legal services to modify his plan. Contrary to LBR 2016-1, Mr. Gillis sought additional fees above the flat fee amount, failed to modify the plan and did not seek to modify the “Rights and Responsibilities” as required under LBR 2016-1. One other example of

the breach of the “Rights and Responsibilities” was debtor’s testimony that he did not meet Mr. Gillis until the section 341(a) meeting of creditors and had not received pre-bankruptcy consultation. The Court heard disputed testimony, ruled in favor of the Debtor, and ordered fees disgorged. Exhibit J, *In re Cervantes*, Case No. 18-10306-B-13, ECF No. 109. b.

b. *In re Islas Gonzalez*, Case No. 17-14157. In this case, the debtors required legal services to modify the plan. Mr. Gillis declined to provide the services and instead counseled the debtors to get their case dismissed and file a new case. In doing so, Mr. Gillis asked for additional fees. When notified of Mr. Gillis’ suspension, debtors obtained substitute counsel and have alleged that the previously awarded flat fee award under the “opt in” procedure was excessive. In addition, the debtors filed a declaration stating that they met Mr. Gillis for the first time to get their first case modified, in addition to meeting him at “the courthouse.” Mr. Gillis’s response does not deny that the first time he met the debtors was at a section 341(a) meeting. That matter is set for hearing on June 24, 2020. See Exhibit K, *In re Islas and Gonzalez*, Case No. 17-14157 and ECF Nos. 133, 135, 145, 148-149, and 170-173 in Case No. 17-14157.

c. *In re Lopez*, Case No. 19-22211. In this case, the United States Trustee has alleged that Mr. Gillis failed to adequately represent the Debtor by his failure to timely prepare schedules, failure to attend adjourned section 341(a) meetings, and inadequate prosecution of the case prejudicial to the debtor. That matter is set for hearing on June 2, 2020. See Exhibit L, *In re Lopez*, Case No. 19-22211, ECF No. 126.

Dckt. 20.

The U.S. Trustee has provided four declarations in support of this Motion. The first is provided by David Cusick, the Chapter 13 Trustee to whom eighty-four (84) of the currently pending Chapter 13 cases filed by Mr. Gillis are assigned. Mr. Cusick testifies that he is the Chapter 13 trustee in eight-four of the Gillis filed cases. He testifies that upon learning of Mr. Gillis’ suspension, Mr. Cusick started objecting to Mr. Gillis’ attorney’s fees in newly filed cases, as well as Mr. Gillis being paid further fees through the Chapter 13 cases.

Mr. Cusick further testifies that he directed his senior staff attorney to prepare a spreadsheet regarding Mr. Gillis’ cases and the information pertinent to the Fee Rubric calculation, which spread sheet is provided as Exhibit A in support of the Motion. Cusick Declaration, Dckt. 23.

The second Declaration is provided by Patricia Vargas, a Paralegal Specialist for the U.S. Trustee. Ms. Vargas testifies that she has reviewed the eight-four cases assigned to Chapter 13 Trustee Cusick (presumably has reviewed the court docket for each of the cases) and determined that Mr. Gillis’ former clients have obtained substitute counsel in only eight (8) of the eighty-four (84) cases filed by Mr. Gillis. Vargas Declaration, Dckt. 25.

The third Declaration is provided by Tina Spyksma, another paralegal specialist for the U.S. Trustee. Ms. Spyksma’s testimony is to authenticate Exhibits B through M, many of which are from

various files of this court for Chapter 13 cases filed by Mr. Gillis. Dckt. 26.

The fourth Declaration is that of Neil Enmark, Esq., staff counsel to Chapter 13 Trustee David Cusick. Mr. Enmark authenticates Exhibit A, describes how he prepared Exhibit A, and how Exhibit A is organized. Dckt. 24.

RESPONSE FILED BY THOMAS O. GILLIS

Mr. Gillis filed his Response to the Trustee's Motion. Dckt. 161. Mr. Gillis does not provide his Declaration in support of the Response. Mr. Gillis advances his theory on why the multi-judge panel heard and the Joint Ruling was issued.

Mr. Gillis' Response begins with an affirmation of the Joint Ruling process and the Fee Rubric adopted by the bankruptcy judges:

The hearing was not adversary in nature. The Judges were interested in a solution to avoid me filing 200 to 300 fee applications.

The meeting [hearings] was cordial and informative. I told them it takes two days for me to prepare a proper fee application and I would have to breakdown each file to file a fee application. It would take one year to file all fee applications.

...

The Judges emerged with a well reasoned solution. They would conduct another hearing to arrive at a "Rubric" to apply to all cases. The Rubric would replace a fee application by fixing a percentage of fees earned based on the task performed.

They asked for my agreement on setting a Rubric to be applied to all cases. I agreed. I thought and still think that the idea of the use of a Rubric was both innovative and "fit for the purpose."

Another hearing to set the Rubric was scheduled by the Court. At the new hearing, after hearing evidence, the Court set a Rubric on page 22 of their Ruling on March 31, 2020. At that hearing I was asked by Judge Clement if I would agree to abide by the Rubric in all cases. I said I would.

The Rubric the Court set, in my opinion, was incorrect in setting 20% as work remaining after confirmation. David Johnston, Esq. and I offered the only expert proof and we testified that it should be 10%.

Response, p.2:14-26, 3:1-13; Dckt. 161. Mr Gillis then states that he has filed an appeal of the Joint Decision to address the 20%/10% disagreement for the Phase III fee percentage.

Mr. Gillis states that the Fee Rubric was adopted for general application in the pending cases he filed, with there being left an avenue for adjusting the Fee Rubric for specific cases. *Id.*, p. 3:20-26.

Response to Request For Order Requiring

Mr. Gillis to Provide the Rights and Responsibility Certification and Substitution of Counsel Information

Mr. Gillis approaches the requests for the Rights and Responsibilities Certifications and the Substitution of Counsel information as a request for a mandatory injunction. Response, starting on page 3; *Id.* Mr. Gillis reviews the legal standards for the issuance of a mandatory injunction.

The Response then reviews the three specific cases cited in the Motion in support of the U.S. Trustee requesting the court to adjust the Fee Rubric. The Response includes many factual allegations, specific to each of the cases.

The Response then discusses the burdens that providing the Rights and Responsibilities certifications and the status of substitutions report. This includes Mr. Gillis' health, medical conditions, and a physical inability to do such work, including the statement that Mr. Gillis' health conditions limit his ability to work only a few hours a day. Response, p. 12:15-18; *Id.*

The Response concludes with an assertion that requiring him to certify that he has complied with the Rights and Responsibilities imposed on debtor counsel as a condition of the Local Bankruptcy Rule 2016-1 fixed fee and reporting the status of the substitutions of counsel that he reported were in process as requests to delay the commencement of his suspension is not a "core proceeding" and beyond the scope of these federal court proceeding. *Id.*, p. 13.

REPLY OF THE U.S. TRUSTEE TO GILLIS RESPONSE

The U.S. Trustee filed a Reply on July 7, 2020. Dckt. 170. The U.S. Trustee first reports that this court issued an order adopting the Fee Rubric District-wide. The Reply specifically addresses the assertions in Mr. Gillis' Response. This includes discussing case specific factors in adjustments to the Fee Rubric.

The U.S. Trustee disputes that requesting the certification of completion of the duties required under the Rights and Responsibilities documents filed in each case and providing a status of the substitutions is not a mandatory injunction. Additionally, the U.S. Trustee addresses the issue of whether requiring the certifications and providing the substitution information is a core proceeding.

DECISION

The court begins with the last assertion by Mr. Gillis that obtaining certification from Mr. Gillis that he actually performed the services and what Mr. Gillis has done for his former clients in commencing federal court proceedings is beyond the scope of federal court jurisdiction. In short, the court does not so agree with Mr. Gillis.

At issue before this court is what are the reasonable, not excessive fees for the services he has provided to his Chapter 13 debtor clients. The court begins with 11 U.S.C. § 329 (emphasis added), a federal statutory section as part of the Bankruptcy Code, which provides:

§ 329. Debtor's transactions with attorneys

(a) Any attorney representing a debtor in a case under this title, or in connection with such a case, whether or not such attorney applies for compensation under this title, **shall file with the court a statement of the compensation paid or agreed to be paid**, if such payment or agreement was made after one year before the date of the filing of the petition, for services rendered or to be rendered in contemplation of or in connection with the case by such attorney, and the source of such compensation.

(b) **If such compensation exceeds the reasonable value of any such services, the court may cancel any such agreement, or order the return of any such payment, to the extent excessive, to—**

(1) **the estate**, if the property transferred—

(A) would have been property of the estate; or

(B) was to be paid by or on behalf of the debtor under a plan under chapter 11, 12, or 13 of this title; or

(2) **the entity that made such payment.**

As a matter of federal law, arising under the Bankruptcy Code, Mr. Gillis is required to provide a statement of the compensation paid and agreement to pay compensation for services relating to the bankruptcy filing, petition, case, and in connection with the case. Then, as a matter of federal law arising under the Bankruptcy Code, the federal judge is given the power to review, consider, cancel the attorney's agreement with the debtor (or possible debtor), and order the repayment of monies from the attorney.

The review of Mr. Gillis' fees, conducting proceedings relating to consideration of those fees, and requiring information necessary to determine the fees that may properly be paid to or retained by an attorney for a debtor is a core proceeding arising under the Bankruptcy Code itself. Further, it relates to Mr. Gillis conduct as an attorney admitted to practice in the federal courts of this District.

Request for Certification of Rights and Responsibilities and Report of Status of Substitutions

In considering this request, the court begins with the Fee Rubric itself. As discussed in this and the related proceedings, this court and the bankruptcy judges in this District have adopted the Fee Rubric as a refinement of the fixed fee provided in Local Bankruptcy Rule 2016-1. As set forth in the Joint Decision, the judges recognize that the Fee Rubric is subject to adjustment on a case by case basis. But the Fee Rubric determines the reasonable, non-excessive fees in general for the stage of the representation that Mr. Gillis was able to get his former client.

It is important to remember that the U.S. Trustee and Mr. Gillis were able to provide for any further payments to which Mr. Gillis is entitled to under the Fee Rubric to be deposited into a fund for the benefit of Mr. Gillis' former clients. This is a now self-executing execution or offset against Mr. Gillis' obligation to pay back monies he has been overpaid for services. The court's Order (Dckt. 150) requires that said payments from the Chapter 13 Trustees shall be disbursed directly with the Clerk of

the Court and held pending order of the court how such monies are distributed to the cases in which Mr. Gillis has been overpaid or to former clients whose cases have been dismissed who overpaid Mr. Gillis. Thus, as monies for any fees allowed under the Fee Rubric are to be disbursed by the Chapter 13 Trustee, they will go directly to the Clerk of the Court for the benefit of Mr. Gillis' former clients and they bankruptcy estates.

The Fee Rubric has been established to provide for a determination of reasonable, non-excessive fees based upon objective factors--the status of the bankruptcy case. These are consistent with Local Bankruptcy Rule 2016-1(c)(4) which has a similar provision in the event that a bankruptcy case is dismissed prior to confirmation of a Chapter 13 plan.

Given that the Fee Rubric is based on objective factors, the court concludes that requiring the preparation of four hundred and eighteen (418) statements that Mr. Gillis has not provided all of the legal services required under the Rights and Responsibilities statements filed in each of the four hundred and eighteen cases is at this time impractical. The Fee Rubric provides for reducing the fees allowed that are reasonable and not excessive (subject to a case by case specific adjustment) for those cases that Mr. Gillis cannot provide all of the required services for Mr. Gillis to be entitled to the full fixed fee.

The court cannot identify any benefit in the court fulfilling its obligations arising under the Bankruptcy Code, including 11 U.S.C. § 329, to determine the reasonable, non-excessive fees that Mr. Gillis is entitled to as a matter of Federal, Bankruptcy Law. It is indisputable that Mr. Gillis has not been able to provide all of the required services.

With respect to the second request, ordering Mr. Gillis to provide hundreds and hundreds of reports on the status of the substitutions and hold up fee payments to the Clerk of the Court under the Fee Rubric, the court views this as discovery that the U.S. Trustee can undertake, as the U.S. Trustee deems appropriate.

With respect to substitutions, it has been represented to this court that Mark Hannon, Esq., who is identified as the current shareholder of Latino Law, Inc., is to substitute in as counsel in the place of Mr. Gillis in the cases pending in this District. It has also been reported that Mr. Hannon has hired Mr. Gillis as a paralegal who is working at Latino Law, Inc. for Mr. Hannon.

In the pleadings filed in connection with the Joint Decision proceeding to establish the Fee Rubric, Mr. Gillis filed a response stating:

Respondent has attached a list of the pending cases that are yet unconfirmed (Exhibit C). Mark J. Hannon has agreed to substitute into those cases and protect them to confirmation and beyond (see Agreement of Mark J. Hannon, Exhibit B).

19-12274; Gillis Response, Dckt. 29. The Exhibit C reference in the above is filed in case 19-12274, Dckt. 33, and identifies forty-two (42) Chapter 13 cases in which Mr. Hannon has agreed to be substitute counsel in the place of Mr. Gillis.

Provided as Exhibit B referenced above is the Letter Agreement for Mr. Hannon to substitute in as counsel in Mr. Gillis cases. The Letter Agreement states:

This will confirm that I agree to substitute in as attorney on your confirmed

Chapter 13 cases as soon as proper substitutions can be signed and filed. We have been friends for 30 years. I will do this in honor of our friendship.

...

I will service them free and will only apply for a fee if a particular case needs considerable legal work.

Also there are less than 35 cases that remain unconfirmed. I will substitute in on those cases and prosecute them to discharge. I may apply for a fee if the case requires a great deal of legal work.

Id., Exhibit B. This Letter Agreement appears to say that Mark Hannon has agreed to (as this court understood from representations at hearings) to substitute in on all cases, not merely those listed on Exhibit C.

Mr. Gillis confirms this in his Declaration filed with the Gillis Response in 19-12274, in which he testifies:

16. Mark Hannon has agreed to service my Chapter 13 cases that have paid in full, without a fee (see list of unconfirmed Gillis cases to be taken over by Mark Hannon, Exhibit B).

17. I have attached a list of the pending cases that are yet unconfirmed (Exhibit C). Mark J. Hannon has agreed to substitute into those cases and protect them to confirmation and beyond (see Agreement of Mark J. Hannon, Exhibit B).

Id.; Declaration, p. 4:11-18, Dckt. 30.

It appears that there is little utility in having Mr. Gillis prepare a report as to the status of the substitutions, as Mr. Hannon and Mr. Gillis have already provided the court and all parties in interest as to who is the attorney who is to be substituting in (assuming that Mr. Gillis' former clients choose to accept Mr. Hannon as their counsel).

The Trustee also wants the court to order that Mr. Gillis provide information about fees, what has been requested, what has been paid to whom, and the like. This is in the nature of discovery to be taken by a party in interest as part of determining what, if any, cases should be the subject of a case by case requested adjustment to the Fee Rubric.

The court leaves discovery to be conducted by the U.S. Trustee and not undertake "judicial discovery."

**Fee Rubric Application and Determination of
Non-Excessive Fees and Overpayment
Repayment Amounts for David Cusick, Trustee
Chapter 13 Case**

Exhibit A provided by the U.S. Trustee is the analysis under the Fee Rubric in the cases for which David Cusick is the Chapter 13 Trustee. Dckt. 27 at 3.

In restating the information provided by the Chapter 13 Trustee, it appears that the Trustee has identified the Phase by the current uncompleted Phase. For clarity, the court identifies it by the completed Fee Rubric Phase for the fee percentage used. This is consistent with the application of the Fee Rubric in the Joint Ruling.

Case No.	Fee Rubric Phase Completed	Fixed Fee Amount	Fees Paid To Gillis By Client	Fees Paid to Gillis by Trustee	Fees Permitted Under Fee Rubric	Balance Due Gillis For Deposit With Clerk of the Court	Overpayment to be Returned by (Disgorged) from Gillis to Clerk of the Court
19-27368	I	\$4,000	\$2,000	\$0	\$1,200		\$800
19-27362	I	\$4,000	\$1,000	\$0	\$1,200	\$200	
19-27363	I	\$6,000	\$2,000	\$0	\$1,800		\$200
19-27416	I	\$4,000	\$2,000	\$0	\$1,200		\$800
19-26568	I	\$6,000	\$3,000	\$0	\$1,800		\$1,200
19-26473	I	\$4,000	\$2,000	\$0	\$1,200		\$800
19-26476	I	\$6,000	\$0	\$0	\$1,800	\$1,800	
19-25501	I	\$6,000	\$2,000	\$0	\$1,800		\$200
19-22211	I	\$6,000	\$3,000	\$0	\$1,800		\$1,200
19-24003	II	\$4,000	\$4,000	\$0	\$2,400		\$1,600
19-22716	II	\$4,000	\$2,000	\$900	\$2,400		\$500
19-24464	II	\$4,000	\$2,000	\$1,750	\$2,400		\$1,350
19-20803	II	\$4,000	\$1,800	\$700	\$2,400		\$100
						=====	
Balance Due Gillis For Deposit With Clerk of the Court						\$2,000	=====
		Overpayment to be Returned by (Disgorged) from Gillis to Clerk of the Court					\$8,750

Case No.	Fee Rubric Phase Completed	Fixed Fee Amount	Fees Paid To Gillis By Client	Fees Paid to Gillis by Trustee	Fees Permitted Under Fee Rubric	Balance Due Gillis For Deposit With Clerk of the Court	Overpayment to be Returned by (Disgorged) from Gillis to Clerk of the Court
19-22717	III	\$4,000	\$2,000	\$2,000	\$3,200		\$800
18-27922	III	\$4,000	\$2,000	\$2,000	\$3,200		\$800
19-22213	III	\$4,000	\$2,000	\$2,000	\$3,200		\$800
18-27289	III	\$4,000	\$2,000	\$2,000	\$3,200		\$800
18-27291	III	\$4,000	\$1,600	\$1,400	\$3,200	\$200	
19-20901	III	\$4,000	\$2,000	\$2,000	\$3,200		\$800
18-24126	III	\$4,000	\$2,000	\$1,836.28	\$3,200		\$636.28
18-24785	III	\$4,000	\$2,000	\$2,000	\$3,200		\$800
18-25798	III	\$4,000	\$2,000	\$2,000	\$3,200		\$800
18-26157	III	\$4,000	\$4,000	\$0	\$3,200		\$800
18-24510	III	\$4,000	\$2,000	\$2,000	\$3,200		\$800
18-27923	III	\$4,000	\$2,000	\$2,000	\$3,200		\$800
18-23406	III	\$6,000	\$3,000	\$2,000	\$4,800		\$200
18-26788	III	\$4,000	\$2,000	\$2,000	\$3,200		\$800
18-26154	III	\$4,000	\$2,000	\$1,823.90	\$3,200		\$623.90
18-25617	III	\$4,000	\$2,000	\$2,000	\$3,200		\$800
18-22318	III	\$6,000	\$3,000	\$2,100	\$4,800		\$300
18-22316	III	\$4,000	\$2,000	\$2,000	\$3,200		\$800
18-24813	III	\$4,000	\$2,000	\$2,000	\$3,200		\$800
						=====	
Balance Due Gillis For Deposit With Clerk of the Court						\$200	=====
		Overpayment to be Returned by (Disgorged) from Gillis to Clerk of the Court					\$12,960.18

Case No.	Fee Rubric Phase Completed	Fixed Fee Amount	Fees Paid To Gillis By Client	Fees Paid to Gillis by Trustee	Fees Permitted Under Fee Rubric	Balance Due Gillis For Deposit With Clerk of the Court	Overpayment to be Returned by (Disgorged) from Gillis to Clerk of the Court
18-21629	III	\$4,000	\$2,000	\$2,000	\$3,200		\$800
18-23382	III	\$4,000	\$2,000	\$0	\$3,200	\$1,200	
18-20419	III	\$4,000	\$1,800	\$2,200	\$3,200		\$800
18-20416	III	\$4,000	\$2,000	\$2,000	\$3,200		\$800
18-20516	III	\$4,000	\$2,000	\$2,000	\$3,200		\$800
18-22675	III	\$4,000	\$2,000	\$2,000	\$3,200		\$800
18-22317	III	\$4,000	\$2,000	\$2,000	\$3,200		\$800
18-22665	III	\$6,000	\$3,000	\$2,400	\$4,800		\$600
18-22669	III	\$4,000	\$2,000	\$2,000	\$3,200		\$800
17-27494	III	\$4,000	\$2,000	\$2,000	\$3,200		\$800
18-21481	III	\$4,000	\$2,000	\$2,000	\$3,200		\$800
1726977	III	\$6,000	\$3,000	\$2,700	\$4,800		\$900
1726887	III	\$4,000	\$2,000	\$2,000	\$3,200		\$800
1726897	III	\$4,000	\$2,000	\$2,000	\$3,200		\$800
18-20515	III	\$4,000	\$2,000	\$2,000	\$3,200		\$800
18-20422	III	\$4,000	\$2,000	\$2,000	\$3,200		\$800
17-26975	III	\$4,000	\$2,000	\$2,000	\$3,200		\$800
17-26458	III	\$4,000	\$2,000	\$2,000	\$3,200		\$800
17-27497	III	\$4,000	\$2,000	\$2,000	\$3,200		\$800
17-23300	III	\$4,000	\$2,000	\$2,000	\$3,200		\$800
17-20947	III	\$4,000	\$2,000	\$2,000	\$3,200		\$800
17-24817-	III	\$4,000	\$2,000	\$2,000	\$3,200		\$800
17-25025	III	\$6,000	\$3,000	\$2,000	\$4,800		\$200
17-25762	III	\$4,000	\$2,000	\$3,000	\$3,200		\$1,800
17-25424	III	\$4,000	\$2,000	\$2,000	\$3,200		\$800
17-23659	III	\$4,000	\$4,000	\$0	\$3,200		\$800

						=====	
Balance Due Gillis For Deposit With Clerk of the Court						\$1,200	=====
		Overpayment to be Returned by (Disgorged) from Gillis to Clerk of the Court					\$20,300

Case No.	Fee Rubric Phase Completed	Fixed Fee Amount	Fees Paid To Gillis By Client	Fees Paid to Gillis by Trustee	Fees Permitted Under Fee Rubric	Balance Due Gillis For Deposit With Clerk of the Court	Overpayment to be Returned by (Disgorged) from Gillis to Clerk of the Court
17-23662	III	\$4,000	\$2,000	\$2,000	\$3,200		\$800
17-23303	III	\$4,000	\$2,000	\$2,000	\$3,200		\$800
17-22440	III	\$6,000	\$6,000	\$0	\$4,800		\$1,200
17-22965	III	\$4,000	\$2,000	\$2,000	\$3,200		\$800
17-22110	III	\$4,000	\$2,000	\$2,000	\$3,200		\$800
17-22109	III	\$4,000	\$1,800	\$2,200	\$3,200		\$800
17-22535	III	\$6,000	\$2,000	\$4,000	\$4,800		\$1,200
17-22536	III	\$6,000	\$2,000	\$4,000	\$4,800		\$1,200
17-21834	III	\$4,000	\$2,000	\$2,000	\$3,200		\$800
17-20248	III	\$4,000	\$0	\$4,000	\$3,200		\$800
16-28566	III	\$4,000	\$2,000	\$2,000	\$3,200		\$800
16-28001	III	\$4,000	\$2,000	\$2,000	\$3,200		\$800
16-24758	III	\$4,000	\$2,000	\$2,000	\$3,200		\$800
15-29850	III	\$4,000	\$2,000	\$2,000	\$3,200		\$800
16-21260	III	\$4,000	\$2,000	\$2,000	\$3,200		\$800
16-20289	III	\$4,000	\$2,000	\$2,000	\$3,200		\$800
15-2816-5	III	\$6,000	\$6,000	\$0	\$4,800		\$1,200
15-27974	III	\$4,000	\$2,500	\$1,500	\$3,200		\$800
15-24973	III	\$4,000	\$2,000	\$2,000	\$3,200		\$800
15-25536	III	\$4,000	\$0	\$4,000	\$3,200		\$800
15-23801	III	\$6,000	\$2,000	\$4,000	\$4,800		\$1,200

15-20659	III	\$4,000	\$4,000	\$0	\$3,200		\$800
16-22465	III	\$4,000	\$2,000	\$2,000	\$3,200		\$800
16-28384	III	\$4,000	\$2,000	\$2,000	\$3,200		\$800
18-21823	III	\$4,000	\$2,000	\$2,000	\$3,200		\$800
18-24125	III	\$4,000	\$2,000	\$2,000	\$3,200		\$800
						=====	=====
Balance Due Gillis For Deposit With Clerk of the Court						\$0	
	Overpayment to be Returned by (Disgorged) from Gillis to Clerk of the Court						\$22,800

For the above identified cases, computing the attorney's fees permitted Mr. Gillis under the Fee Rubric, the amount of monies that Mr. Gillis must repay (disgorge) and the monies due Mr. Gillis under the Fee Rubric to be paid in the future are:

Amount Thomas Gillis Must Repay (disgorge) to the Clerk of the Court.....\$64,810.80

Amount Due Thomas Gillis in Chapter 13 Cases that
David Cusick, the Chapter 13 Trustee shall disburse
Directly to the Clerk of the Court.....\$ 3,400.00

The above amounts are subject to adjustment with respect to whether for Phase III it is 80% of the fixed fee or 90% if Mr. Gillis pursues his appeal.

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

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

The Omnibus Motion of the United States Trustee, DCN: UST-3, having been presented to the court, and upon review of the US Trustee's Omnibus Motion, the arguments of counsel, the files in this case, the Fee Rubric adopted in this District to determine the allowable, compensation for Thomas O. Gillis as counsel for the debtor in the Chapter 13 cases pursuant to Local Bankruptcy Rule 2016-1 and 11 U.S.C. § 329 for each of the Chapter 13 cases, and good cause appearing.

IT IS ORDERED that the Motion is Granted and the allowable compensation for Thomas O. Gillis as counsel for the debtor in the Chapter 13 cases pursuant to Local Bankruptcy Rule 2016-1 and 11 U.S.C. § 329 for each of the Chapter 13 cases listed Addendum A hereto are the amounts specified for each case in said Addendum A, which is incorporated herein by this reference.

IT IS FURTHER ORDERED the specific amount of overpayments to Thomas O. Gillis in excess of the allowed amount in each Chapter 13 case is stated in Addendum A, the amount that Thomas O. Gillis must repay (disgorge) for amounts received in excess of the allowed compensation for each case, and the compensation to which Mr. Gillis is to be paid in the future from specific Chapter 13 cases that shall be disbursed by the Chapter 13 Trustee directly to the Clerk of the Court pursuant to this court's prior order adopting the Fee Rubric for all of Mr. Gillis' cases in this District (Order, Dckt. 150).

IT IS FURTHER ORDERED that Thomas O. Gillis shall immediately repay directly to the Clerk of the Court, to be deposited with the other monies relating to Mr. Gillis' fees the excessive fee amounts specified on Addendum A for each case, totals **\$64,810.80**, which amounts are due upon the entry of this order.

This Order is without prejudice to the pending appeal by Thomas O. Gillis of whether the Phase III percentage of the Fee Rubric should be 80% or 90%, and the rights of any party in interest to seek an adjustment of the Fee Rubric based upon specific facts and circumstances of a specific case or common unique facts of a group of cases.

IT IS FURTHER ORDERED that all other relief in the Motion is denied without prejudice.

This Order constitutes a judgment (Fed. R. Civ. P. 54(a) and Fed. R. Bankr. P. 7054, 9014) and may be enforced by the U.S. Trustee or designee pursuant to the Federal Rules of Civil Procedure and Federal Rule of Bankruptcy Procedure (including Fed. R. Civ. P. 69 and Fed. R. Bankr. P. 7069, 9014).

28.	<u>20-00202</u> -E-0 <u>UST</u> -4	IN THE MATTER OF THOMAS OSCAR GILLIS, FEE RUBRIC	MOTION UNDER 11 U.S.C. 329 AND 105 AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 2017 6-4-20 <u>[39]</u>
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[The court's Ruling and Order have been copied from the Ruling on UST-3 In Light of the Relief Requested Being the Same, Except as it is for the Chapter 13 Cases For Which Russell Greer is the Chapter 13 Trustee]

Tentative Ruling: The Omnibus Motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Thomas O. Gillis parties requesting special notice, and Office of the United States Trustee on June 4, 2020. By the court's calculation, more than the required 28 days' notice has been provided.

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

The Motion requesting the application of the Fee Rubric to all of the pending Chapter 13 cases filed by Thomas O. Gillis assigned to Chapter 13 Russell Greer is granted, the amount of compensation fees in excess of that allowed by the Fee Rubric for those cases determined, and Thomas O. Gillis ordered to return (disgorgement) the excessive fees, which shall be paid directly to the Clerk of the Bankruptcy Court, to be held pending further order of the court for the disbursement thereof to Mr. Gillis' former clients and their respective bankruptcy estates.

All other requested relief is denied without prejudice.

Thomas O. Gillis is an attorney who had a very prolific practice in the Eastern District of California Bankruptcy Court for a number of years. When the undersigned judge Chief Judge first came on the bench, Mr. Gillis focused on doing Chapter 11 and 13 cases. That evolved into a Chapter 13 practice in which his office focused on providing legal services in Chapter 13 consumer restructures and Chapter 7 liquidation for Hispanic clients who had limited or nonexistent English language skills.

In the late 2010's that practice ceased when Mr. Gillis was suspended by the State Bar of California. Mr. Gillis signed a stipulation on April 30, 2019, with the State Bar for a two year

suspension from the practice of law. The Chief Justice of the California Supreme Court issued her order for his suspension on November 1, 2019, with the suspension effective December 1, 2019. Mr. Gillis made a request for a continuance to allow him additional time to assist his clients in obtaining replacement counsel. Pursuant to that request the State Bar Court delayed the suspension until January 31, 2020. On January 28, 2020, Mr. Gillis made a second request for the extension of the start of his suspension until March 15, 2020, so that he could have additional time for assisting his clients. The State Bar granted a final delay in Mr. Gillis suspension, ordering that it commenced on February 15, 2020, and ordering Mr. Gillis not to accept any new clients. ^{FN. 1.}

FN. 1. Ruling on Chapter 13 Trustee Objections to Attorney Fee Compensation, 19-12274, Dckt. 42; Supreme Court Order of Suspension, S256770 (State Bar Court Nos. 16-O-10780 (17-O-02624; 17-O-04790)), Filed November 1, 2019; Order Filed February 7, 2020, State Bar Court of California, *In re Gills*, 16-O-10780; Order Filed November 27, 2019, State Bar Court of California, *In re Gills*, 16-O-10780.

With Mr. Gillis' suspension, the issue arose as to what fees Mr. Gillis was allowed to be paid for the partial representation of his clients in Chapter 13 cases, Mr. Gillis being unable to complete that representation in those cases due to his suspension. 11 U.S.C. § 329, L.B.R. 2016-1. To provide consumer attorneys and consumer debtors a cost effective method of having the court determine reasonable fees for representing debtors in Chapter 13 cases, the judges of the Eastern District of California adopted Local Bankruptcy Rule 2016-1 which allows the attorney and consumer to elect a "flat fee" (or commonly called a "no-look" fee) of \$4,000.00 in which the debtor's obligations are primarily consumer debts and \$6,000.00 in which the debtor's obligations are primarily non-consumer debts (such as debts from a sole proprietorship).

Mr. Gillis and his consumer debtor clients elected to have Mr. Gillis' fees allowed as a fixed fee as provided in Local Bankruptcy Rule 2016-1.

With Mr. Gillis suspension there were four hundred and eighty-one (481) open Chapter 13 cases in various stages of prosecution, but which have not been completed for which the full flat fee provided under Local Bankruptcy Rule 2016-1. The provisions of Local Bankruptcy Rule 2016-1 provide that the court may allow compensation different than the fixed fee amount "if such compensation proves to have been improvident in light of developments not capable of being anticipated at the time the plan is confirmed or denied confirmation. L.B.R. 2016-1(c)(5). This commonly occurs on a "one-off" basis, and the court requires a motion for determination of fees in the same manner as an attorney requesting the allowance of fees pursuant to 11 U.S.C. § 330 or requiring the presentation of the same type of evidence as part of a motion to disallow fees filed by a debtor or other party in interest. Such practice is reasonable for such one-off issues which rarely arise in this District.

However, with Mr. Gillis' Chapter 13 debtor client cases, there could be as many as 481 motions or objections that would be required. Such would be inconsistent with the premise of Local Bankruptcy Rule 2016-1 providing the fixed fee as a device to allow financially stressed parties a cost efficient method for compliance with 11 U.S.C. § 329 (court to determine reasonableness of a debtor's attorney's fees relating to the bankruptcy if determined excessive).

To address this conundrum, the bankruptcy judges in the Eastern District conducted a joint

proceeding with two exemplar cases, conducted by the Hon. Frederick E. Clement and the Hon. Rene Lastreto, with the Chief Bankruptcy Judge also participating. A Joint Ruling was issued therefrom adopting a “Fee Rubric” which set a percentage amount of the fixed fee for the legal services provided based on the status of the case. Ruling on Chapter 13 Trustee Objection to Attorney Fee Compensation; *In re Cervantes* and *In re Chinchilla*; 19-12274, Dckt. 42 (“Joint Ruling”).

The Fee Rubric has been adopted by all bankruptcy judges in this District for Mr. Gillis’ cases and ordered effective in all such cases. Adoption Order, *In re Matter of Thomas Oscar Gills*, 20-202, Dckt. 150. Mr. Gillis has agreed to the application of the Fee Rubric (rather than having 148 separate fee motions), with one issue that is the subject of an appeal to the Bankruptcy Appellate panel about whether the Phase III percentage should be 80% or 90%. *Id.*

A second important part of the Adoption Order is that any further payments to which Mr. Gillis is entitled to under the Fee Rubric are deposited directly with the Clerk of the Court and held pending order of the court how such monies are distributed to the cases in which Mr. Gillis has been overpaid or to former clients whose cases have been dismissed who overpaid Mr. Gillis. Thus, as monies for any fees allowed under the Fee Rubric are to be disbursed by the Chapter 13 Trustee, they will go directly to the Clerk of the Court for the benefit of Mr. Gillis’ former clients and they bankruptcy estates.

Mr. Gillis expressly agreed on the record to this payment of any further amounts due into a common fund for the benefit of his former clients for cases in which Mr. Gillis is overpaid under the Fee Rubric and as it may properly be adjusted for specific cases.

The Joint Ruling adopted by all Bankruptcy Judges in this District established the following Fee Rubric for determination of Mr. Gillis’ fees in his Chapter 13 cases:

Phase	Services Provided	Aggregate Percentage of No-Look Fee Earned
Phase I	Pre-petition through meeting of creditors	30%
Phase II	Meeting of Creditors through initial confirmation	60%
Phase III	Confirmation to 90 days after Notice of Filed Claims	80% ^{FN. 2}
Phase IV	Discharge, closure, certifications, necessary lien clearances	100%

FN. 2. It is this percentage amount that Mr. Gillis has identified as being the subject of the pending appeal before the Bankruptcy Appellate Panel, with Mr. Gillis asserting it should be 90%.

OMNIBUS MOTION FOR APPLICATION OF FEE RUBRIC

**TO GILLIS CHAPTER 13 CASES FOR WHICH
RUSSELL D. GREER IS THE CHAPTER 13 TRUSTEE**

Consistent with the spirit and intent of Local Bankruptcy Rule 2016-1 and the Fee Rubric adopted by the bankruptcy judges in this District, the U.S. Trustee has filed an Omnibus Motion (Dckt. 20) for the court to apply the Fee Rubric to all of Mr. Gillis' pending Chapter 13 cases that are assigned to Chapter 13 Trustee Russell Greer. This provides the court, Mr. Gillis, the U.S. Trustee with a single focused proceeding in which the Fee Rubric can be applied to Mr. Greer's Chapter 13 cases. Filed as Exhibit A in support of the Motion is a chart identified as having been prepared by Mr. Greer's office computing the fees pursuant to the Fee Rubric.

The Omnibus Motion then requests further relief. The U.S. Trustee states that the Fee Rubric is subject to modification on a case by case basis depending upon specific facts and circumstances in a specific case.

First, the U.S. Trustee requests that the court order Mr. Gillis certify under penalty of perjury in each of the ninety-one (91) Chapter 13 cases assigned to Chapter 13 Trustee Greer that he has "performed all services contemplated under the 'Rights and Responsibilities' [statement filed by debtor and debtor's counsel setting forth attorney fee agreement], specifically addressing what, if any, consultation services were provided by Mr. Gillis; whether the debtor(s) has been asked to pay additional fees, including in connection with the filing of a new case; and whether the transaction was properly disclosed." ^{FN. 3}

FN. 3. As discussed further below, the reason that the Fee Rubric is necessary is because Mr. Gillis cannot perform all of the services contemplated under the Rights and Responsibilities (EDC Form 3-096), thus such a requirement appears to provide no additional information.

Next, the U.S. Trustee seeks to have the court order Mr. Gillis provide a status report of substitutions for his former clients who have not yet obtained new counsel, which information is to include:

- A. What efforts have been made to find substitute counsel;
- B. Whether substitute counsel exists;
- C. What remaining legal services need to be performed and when;
- D. Whether additional fees have been requested or paid;
- E. Whether Mr. Gillis has complied with State Bar Rule 9.02, and if so, provide evidence of the same as to each debtor; and
- F. Explain why substitute counsel has not been obtained.

Motion, p. 4:3-9; Dckt. 20.

Then, only after the court has received the additional information that can be “discovered” from such information from Mr. Gillis, that the court adjust the Fee Rubric (presumably for each and every of the 84 cases assigned to Mr. Greer).

The U.S. Trustee then state that she reserves the right to seek additional relief based upon what she “discovers” from the responses given by Mr. Gillis pursuant to the order of the court.

Additional Factors Identified by the U.S. Trustee

In the Motion, the U.S. Trustee states with particularity (Fed. R. Bankr. P. 9013) specific grounds for the court to consider in connection with the relief requested. These grounds include the following (identified by the paragraph number in the Motion).

Cases in Which Debtors Are Unrepresented

14. Thus, as early as April 30, 2019, Mr. Gillis was aware that he would be suspended and would not be able to provide services to chapter 13 debtors whose cases normally last three to five years. *Id.* [See Spyksma Decl., ¶¶ 4, 6 and Exhibit D, p. 4 and Exhibit M, p. 25.]

15. Of the 91 Greer Cases, 87 of those have not had a substitution of attorney filed to replace Mr. Gillis. Vargas Decl., ¶ 3. Mr. Gillis was aware of the impact his suspension would have on his clients, and in fact sought relief from the State Bar to delay the effective date of his suspension so that he could find substitute counsel for debtors who have cases lasting three to five years. See Exhibit C, Addendum C.

Issues of Mr. Gillis’ Underperformance

17. Issues of Mr. Gillis’ underperformance have arisen as set forth below.

a. *In re Cervantes*, Case No. 18-10306-B-13. In this case, the debtor required legal services to modify his plan. Contrary to LBR 2016-1, Mr. Gillis sought additional fees above the flat fee amount, failed to modify the plan and did not seek to modify the “Rights and Responsibilities” as required under LBR 2016-1. One other example of the breach of the “Rights and Responsibilities” was debtor’s testimony that he did not meet Mr. Gillis until the section 341(a) meeting of creditors and had not received pre-bankruptcy consultation. The Court heard disputed testimony, ruled in favor of the Debtor, and ordered fees disgorged. Exhibit J, *In re Cervantes*, Case No. 18-10306-B-13, ECF No. 109. b.

b. *In re Islas Gonzalez*, Case No. 17-14157. In this case, the debtors required legal services to modify the plan. Mr. Gillis declined to provide the services and instead counseled the debtors to get their case dismissed and file a new case. In doing so, Mr. Gillis asked for additional fees. When notified of Mr. Gillis’ suspension, debtors obtained substitute

counsel and have alleged that the previously awarded flat fee award under the “opt in” procedure was excessive. In addition, the debtors filed a declaration stating that they met Mr. Gillis for the first time to get their first case modified, in addition to meeting him at “the courthouse.” Mr. Gillis’s response does not deny that the first time he met the debtors was at a section 341(a) meeting. That matter is set for hearing on June 24, 2020. See Exhibit K, In re Islas and Gonzalez, Case No. 17-14157 and ECF Nos. 133, 135, 145, 148-149, and 170-173 in Case No. 17-14157.

c. *In re Lopez*, Case No. 19-22211. In this case, the United States Trustee has alleged that Mr. Gillis failed to adequately represent the Debtor by his failure to timely prepare schedules, failure to attend adjourned section 341(a) meetings, and inadequate prosecution of the case prejudicial to the debtor. That matter is set for hearing on June 2, 2020. See Exhibit L, In re Lopez, Case No. 19-22211, ECF No. 126.

Dckt. 20.

The U.S. Trustee has provided four declarations in support of this Motion. The first is provided by Russell Greer, the Chapter 13 Trustee to whom ninety-one (91) of the currently pending Chapter 13 cases filed by Mr. Gillis are assigned. Mr. Greer testifies that he is the Chapter 13 trustee in ninety-one of the Gillis filed cases.

Mr. Greer further testifies that he has prepared a spreadsheet regarding Mr. Gillis’ cases and the information pertinent to the Fee Rubric calculation, which spread sheet is provided as Exhibit A in support of the Motion. Greer Declaration, Dckt. 42.

The second Declaration is provided by Patricia Vargas, a Paralegal Specialist for the U.S. Trustee. Ms. Vargas testifies that she has reviewed the eight-four cases assigned to Chapter 13 Trustee Cusick (presumably has reviewed the court docket for each of the cases) and determined that Mr. Gillis’ former clients have obtained substitute counsel in only four (4) of the ninety-one (91) cases filed by Mr. Gillis. Vargas Declaration, Dckt. 43.

The third Declaration is provided by Tina Spyksma, another paralegal specialist for the U.S. Trustee. Ms. Spyksma’s testimony is to authenticate Exhibits B through M, many of which are from various files of this court for Chapter 13 cases filed by Mr. Gillis. Dckt. 44.

RESPONSE FILED BY THOMAS O. GILLIS

Mr. Gillis filed his Response to the Trustee’s Motion. Dckt. 163. Mr. Gillis does not provide his Declaration in support of the Response. Mr. Gillis advances his theory on why the multi-judge panel heard and the Joint Ruling was issued.

Mr. Gillis’ Response begins with an affirmation of the Joint Ruling process and the Fee Rubric adopted by the bankruptcy judges:

The hearing was not adversary in nature. The Judges were interested in a solution to avoid me filing 200 to 300 fee applications.

The meeting [hearings] was cordial and informative. I told them it takes two days for me to prepare a proper fee application and I would have to breakdown each file to file a fee application. It would take one year to file all fee applications.

...

The Judges emerged with a well reasoned solution. They would conduct another hearing to arrive at a “Rubric” to apply to all cases. The Rubric would replace a fee application by fixing a percentage of fees earned based on the task performed.

They asked for my agreement on setting a Rubric to be applied to all cases. I agreed. I thought and still think that the idea of the use of a Rubric was both innovative and “fit for the purpose”.

Another hearing to set the Rubric was scheduled by the Court. At the new hearing, after hearing evidence, the Court set a Rubric on page 22 of their Ruling on March 31, 2020. At that hearing I was asked by Judge Clement if I would agree to abide by the Rubric in all cases. I said I would.

The Rubric the Court set, in my opinion, was incorrect in setting 20% as work remaining after confirmation. David Johnston, Esq. and I offered the only expert proof and we testified that it should be 10%

Response, p.2:14-26, 3:1-13; Dckt. 161. Mr Gillis then states that he has filed an appeal of the Joint Decision to address the 20%/10% disagreement for the Phase III fee percentage.

Mr. Gillis states that the Fee Rubric was adopted for general application in the pending cases he filed, with there being left an avenue for adjusting the Fee Rubric for specific cases. *Id.*, p. 3:20-26.

**Response to Request For Order Requiring
Mr. Gillis to Provide the Rights and Responsibility Certification
and Substitution of Counsel Information**

Mr. Gillis approaches the requests for the Rights and Responsibilities Certifications and the Substitution of Counsel information as a request for a mandatory injunction. Response, starting on page 3; *Id.* Mr. Gillis reviews the legal standards for the issuance of a mandatory injunction.

The Response then reviews the three specific cases cited in the Motion in support of the U.S. Trustee requesting the court to adjust the Fee Rubric. The Response includes many factual allegations, specific to each of the cases.

The Response then discusses the burdens that providing the Rights and Responsibilities certifications and the status of substitutions report. This includes Mr. Gillis’ health, medical conditions, and a physical inability to do such work, including the statement that Mr. Gillis’ health conditions limit his ability to work only a few hours a day. Response, p. 12:15-18; *Id.*

The Response concludes with an assertion that requiring him to certify that he has complied with the Rights and Responsibilities imposed on debtor counsel as a condition of the Local Bankruptcy

Rule 2016-1 fixed fee and reporting the status of the substitutions of counsel that he reported were in process as requests to delay the commencement of his suspension is not a “core proceeding” and beyond the scope of these federal court proceeding. *Id.*, p. 13.

REPLY OF THE U.S. TRUSTEE TO GILLIS RESPONSE

The U.S. Trustee filed a Reply on July 7, 2020. Dckt. 172. The U.S. Trustee first reports that this court issued an order adopting the Fee Rubric District-wide. The Reply specifically addresses the assertions in Mr. Gillis’ Response. This includes discussing case specific factors in adjustments to the Fee Rubric.

The U.S. Trustee disputes that requesting the certification of completion of the duties required under the Rights and Responsibilities documents filed in each case and providing a status of the substitutions is not a mandatory injunction. Additionally, the U.S. Trustee addresses the issue of whether requiring the certifications and providing the substitution information is a core proceeding.

DECISION

The court begins with the last assertion by Mr. Gillis that obtaining certification from Mr. Gillis that he actually performed the services and what Mr. Gillis has done for his former clients in commencing federal court proceedings is beyond the scope of federal court jurisdiction. In short, the court does not so agree with Mr. Gillis.

At issue before this court is what are the reasonable, not excessive fees for the services he has provided to his Chapter 13 debtor clients. The court begins with 11 U.S.C. § 329 (emphasis added), a federal statutory section as part of the Bankruptcy Code, which provides:

§ 329. Debtor’s transactions with attorneys

(a) Any attorney representing a debtor in a case under this title, or in connection with such a case, whether or not such attorney applies for compensation under this title, **shall file with the court a statement of the compensation paid or agreed to be paid**, if such payment or agreement was made after one year before the date of the filing of the petition, for services rendered or to be rendered in contemplation of or in connection with the case by such attorney, and the source of such compensation.

(b) **If such compensation exceeds the reasonable value of any such services, the court may cancel any such agreement, or order the return of any such payment, to the extent excessive, to—**

(1) **the estate**, if the property transferred—

(A) would have been property of the estate; or

(B) was to be paid by or on behalf of the debtor under a plan under chapter 11, 12, or 13 of this title; or

(2) the **entity that made such payment.**

As a matter of federal law, arising under the Bankruptcy Code, Mr. Gillis is required to provide a statement of the compensation paid and agreement to pay compensation for services relating to the bankruptcy filing, petition, case, and in connection with the case. Then, as a matter of federal law arising under the Bankruptcy Code, the federal judge is given the power to review, consider, cancel the attorney's agreement with the debtor (or possible debtor), and order the repayment of monies from the attorney.

The review of Mr. Gillis' fees, conducting proceedings relating to consideration of those fees, and requiring information necessary to determine the fees that may properly be paid to or retained by an attorney for a debtor is a core proceeding arising under the Bankruptcy Code itself. Further, it relates to Mr. Gillis conduct as an attorney admitted to practice in the federal courts of this District.

**Request for Certification of Rights and Responsibilities
and Report of Status of Substitutions**

In considering this request, the court begins with the Fee Rubric itself. As discussed in this and the related proceedings, this court and the bankruptcy judges in this District have adopted the Fee Rubric as a refinement of the fixed fee provided in Local Bankruptcy Rule 2016-1. As set forth in the Joint Decision, the judges recognize that the Fee Rubric is subject to adjustment on a case by case basis. But the Fee Rubric determines the reasonable, non-excessive fees in general for the stage of the representation that Mr. Gillis was able to get his former client.

It is important to remember that the U.S. Trustee and Mr. Gillis were able to provide for any further payments to which Mr. Gillis is entitled to under the Fee Rubric to be deposited into a fund for the benefit of Mr. Gillis' former clients. This is a now self-executing execution or offset against Mr. Gillis' obligation to pay back monies he has been overpaid for services. The court's Order (Dckt. 150) requires that said payments from the Chapter 13 Trustees shall be disbursed directly with the Clerk of the Court and held pending order of the court how such monies are distributed to the cases in which Mr. Gillis has been overpaid or to former clients whose cases have been dismissed who overpaid Mr. Gillis. Thus, as monies for any fees allowed under the Fee Rubric are to be disbursed by the Chapter 13 Trustee, they will go directly to the Clerk of the Court for the benefit of Mr. Gillis' former clients and they bankruptcy estates.

The Fee Rubric has been established to provide for a determination of reasonable, non-excessive fees based upon objective factors - the status of the bankruptcy case. These are consistent with Local Bankruptcy Rule 2016-1(c)(4) which has a similar provision in the event that a bankruptcy case is dismissed prior to confirmation of a Chapter 13 plan.

Given that the Fee Rubric is based on objective factors, the court concludes that requiring the preparation of four hundred and eighteen (418) statements that Mr. Gillis has not provided all of the legal services required under the Rights and Responsibilities statements filed in each of the four hundred and eighteen cases is at this time impractical. The Fee Rubric provides for reducing the fees allowed that are reasonable and not excessive (subject to a case by case specific adjustment) for those cases that Mr. Gillis cannot provide all of the required services for Mr. Gillis to be entitled to the full fixed fee.

The court cannot identify any benefit in the court fulfilling its obligations arising under the

Bankruptcy Code, including 11 U.S.C. § 329, to determine the reasonable, non-excessive fees that Mr. Gillis is entitled to as a matter of Federal, Bankruptcy Law. It is indisputable that Mr. Gillis has not been able to provide all of the required services.

With respect to the second request, ordering Mr. Gillis to provide hundreds and hundreds of reports on the status of the substitutions and hold up fee payments to the Clerk of the Court under the Fee Rubric, the court views this as discovery that the U.S. Trustee can undertake, as the U.S. Trustee deems appropriate.

With respect to substitutions, it has been represented to this court that Mark Hannon, Esq., who is identified as the current shareholder of Latino Law, Inc., is to substitute in as counsel in the place of Mr. Gillis in the cases pending in this District. It has also been reported that Mr. Hannon has hired Mr. Gillis as a paralegal who is working at Latino Law, Inc. for Mr. Hannon.

In the pleadings filed in connection with the Joint Decision proceeding to establish the Fee Rubric, Mr. Gillis filed a response stating:

Respondent has attached a list of the pending cases that are yet unconfirmed (Exhibit C). Mark J. Hannon has agreed to substitute into those cases and protect them to confirmation and beyond (see Agreement of Mark J. Hannon, Exhibit B).

19-12274; Gillis Response, Dckt. 29. The Exhibit C reference in the above is filed in case 19-12274, Dckt. 33, and identifies forty-two (42) Chapter 13 cases in which Mr. Hannon has agreed to be substitute counsel in the place of Mr. Gillis.

Provide as Exhibit B reference above is the Letter Agreement for Mr. Hannon to substitute in as counsel in Mr. Gillis cases. The Letter Agreement states:

This will confirm that I agree to substitute in as attorney on your confirmed Chapter 13 cases as soon as proper substitutions can be signed and filed. We have been friends for 30 years. I will do this in honor of our friendship.

...

I will service them free and will only apply for a fee if a particular case needs considerable legal work.

Also there are less than 35 cases that remain unconfirmed. I will substitute in on those cases and prosecute them to discharge. I may apply for a fee if the case requires a great deal of legal work.

Id., Exhibit B. This Letter Agreement appears to say that Mark Hannon has agreed to (as this court understood from representations at hearings) to substitute in on all cases, not merely those listed on Exhibit C.

Mr. Gillis confirms this in his Declaration filed with the Gillis Response in 19-12274, in which he testifies:

16. Mark Hannon has agreed to service my Chapter 13 cases that have paid in full, without a fee (see list of unconfirmed Gillis cases to be taken over by Mark

Hannon, Exhibit B).

17. I have attached a list of the pending cases that are yet unconfirmed (Exhibit C). Mark J. Hannon has agreed to substitute into those cases and protect them to confirmation and beyond (see Agreement of Mark J. Hannon, Exhibit B).

Id.; Declaration, p. 4:11-18, Dckt. 30.

It appears that there is little utility in having Mr. Gillis prepare a report as to the status of the substitutions, as Mr. Hannon and Mr. Gillis have already provided the court and all parties in interest as to who is the attorney who is to be substituting in (assuming that Mr. Gillis' former clients choose to accept Mr. Hannon as their counsel).

The Trustee also wants the court to order that Mr. Gillis provide information about fees, what has been requested, what has been paid to whom, and the like. This is in the nature of discovery to be taken by a party in interest as part of determining what, if any, cases should be the subject of a case by case requested adjustment to the Fee Rubric.

The court leaves discovery to be conducted by the U.S. Trustee and not undertake "judicial discovery."

**Fee Rubric Application and Determination of
Non-Excessive Fees and Overpayment
Repayment Amounts for Russell Greer, Trustee
Chapter 13 Case**

Exhibit A provided by the U.S. Trustee is the analysis under the Fee Rubric in the cases for which Russell Greer is the Chapter 13 Trustee. Dckt. 45 at 3-4.

Case No.	Fee Rubric Phase	Fixed Fee Amount	Fees Paid To Gillis By Client	Fees Paid to Gillis by Trustee	Fees Permitted Under Fee Rubric	Balance Due Gillis For Deposit With Clerk of the Court	Overpayment to be Returned by Gillis to Clerk of the Court
19-90734	I	\$4,000	\$1,000	\$0	\$1,200	\$200	
19-90915	I	\$4,000	\$2,000	\$1,650	\$1,200		\$2,450
19-90929	I	\$4,000	\$2,000	\$0	\$1,200		\$800
20-90017	I	\$4,000	\$4,000	\$0	\$1,200		\$2,800
1890127	II	\$4,000	\$2,000	\$2,000	\$2,400		\$1,600
19-22212	II	\$4,000	\$2,000	\$900	\$2,400		\$500
19-26327	II	\$4,000	\$2,000	\$1,900	\$2,400		\$1,500
19-90225	II	\$4,000	\$2,000	\$2,000	\$2,400		\$1,600

19-90375	II	\$4,000	\$2,000	\$2,000	\$2,400		\$1,600
19-90384	II	\$4,000	\$2,000	\$1,800	\$2,400		\$1,400
19-90385	II	\$4,000	\$2,000	\$900	\$2,400		\$500
19-90386	II	\$4,000	\$2,000	\$900	\$2,400		\$500
19-90387	II	\$4,000	\$2,000	\$800	\$2,400		\$400
19-90388	II	\$4,000	\$4,000	\$0	\$2,400		\$1,600
19-90389	II	\$4,000	\$2,000	\$1,782	\$2,400		\$1,382
19-90390	II	\$4,000	\$2,000	\$2,000	\$2,400		\$1,600
19-90501	II	\$4,000	\$2,000	\$800	\$2,400		\$400
19-90503	II	\$4,000	\$2,000	\$800	\$2,400		\$400
19-90554	II	\$6,000	\$3,000	\$2,100	\$3,600		\$1,500
19-90657	II	\$4,000	\$2,000	\$1,500	\$2,400		\$1,100
19-90791	II	\$4,000	\$2,000	\$2,000	\$2,400		\$1,600
19-90870	II	\$4,000	\$1,000	\$800	\$2,400	\$600	
						=====	
Balance Due Gillis For Deposit With Clerk of the Court						\$800	=====
	Overpayment to be Returned by (Disgorged) from Gillis to Clerk of the Court						\$25,232

Case No.	Fee Rubric Phase	Fixed Fee Amount	Fees Paid To Gillis By Client	Fees Paid to Gillis by Trustee	Fees Permitted Under Fee Rubric	Balance Due Gillis For Deposit With Clerk of the Court	Overpayment to be Returned by Gillis to Clerk of the Court
1491374	III	\$4,000	\$2,000	\$2,000	\$3,200		\$800
1528723	III	\$4,000	\$2,000	\$2,000	\$3,200		\$800
1528869	III	\$6,000	\$3,000	\$3,000	\$4,800		\$1,200
1590117	III	\$6,000	\$3,000	\$3,000	\$4,800		\$1,200
1590302	III	\$6,000	\$2,000	\$4,000	\$4,800		\$1,200
1590402	III	\$4,000	\$2,000	\$2,000	\$3,200		\$800
1590485	III	\$4,000	\$1,300	\$2,700	\$3,200		\$800
1590657	III	\$4,000	\$4,000	\$0	\$3,200		\$800

1590702	III	\$4,000	\$2,000	\$2,000	\$3,200		\$800
1591195	III	\$4,000	\$2,000	\$2,000	\$3,200		\$800
1591211	III	\$4,000	\$2,000	\$2,000	\$3,200		\$800
1621611	III	\$4,000	\$1,800	\$2,200	\$3,200		\$800
1625219	III	\$6,000	\$3,000	\$3,000	\$4,800		\$1,200
1628033	III	\$4,000	\$2,000	\$2,000	\$3,200		\$800
1628125	III	\$4,000	\$2,000	\$2,000	\$3,200		\$800
1628572	III	\$5,500	\$5,500	\$0	\$4,400		\$1,100
1690189	III	\$4,000	\$2,700	\$1,300	\$3,200		\$800
1690976	III	\$4,000	\$1,500	\$2,500	\$3,200		\$800
1691066	III	\$4,000	\$1,000	\$3,000	\$3,200		\$800
1691124	III	\$4,000	\$2,000	\$2,000	\$3,200		\$800
1721085	III	\$6,000	\$4,000	\$2,000	\$4,800		\$1,200
1721833	III	\$4,000	\$2,000	\$2,000	\$3,200		\$800
1722052	III	\$6,000	\$2,000	\$3,774	\$4,800		\$974
						=====	
Balance Due Gillis For Deposit With Clerk of the Court						\$0	=====
	Overpayment to be Returned by (Disgorged) from Gillis to Clerk of the Court						\$20,874

Case No.	Fee Rubric Phase	Fixed Fee Amount	Fees Paid To Gillis By Client	Fees Paid to Gillis by Trustee	Fees Permitted Under Fee Rubric	Balance Due Gillis For Deposit With Clerk of the Court	Overpayment to be Returned by Gillis to Clerk of the Court
1722783		\$4,000	\$2,000	\$2,000	\$3,200		\$800
1722955		\$4,000	\$2,000	\$2,000	\$3,200		\$800
1722991		\$4,000	\$2,000	\$2,000	\$3,200		\$800
1723323		\$4,000	\$2,000	\$2,000	\$3,200		\$800
1724065		\$4,000	\$4,000	\$0	\$3,200		\$800

1725223		\$6,000	\$4,000	\$2,000	\$4,800		\$1,200
1725772		\$6,000	\$3,000	\$2,900	\$4,800		\$1,100
1726248		\$4,000	\$4,000	\$0	\$3,200		\$800
1727194		\$4,000	\$2,000	\$1,500.12	\$3,200		\$300.12
1727246		\$4,000	\$2,000	\$2,000	\$3,200		\$800
1727495		\$6,000	\$3,000	\$2,166.84	\$4,800		\$367
1727534		\$4,000	\$2,000	\$2,000	\$3,200		\$800
1727870		\$4,000	\$1,800	\$2,200	\$3,200		\$800
1728014		\$4,000	\$2,000	\$2,000	\$3,200		\$800
1790143		\$6,000	\$2,000	\$4,000	\$4,800		\$1,200
1790340		\$4,000	\$2,000	\$2,000	\$3,200		\$800
1790459		\$4,000	\$2,000	\$2,000	\$3,200		\$800
1790460		\$4,000	\$2,000	\$1,777.92	\$3,200		\$577.92
1790472		\$0	\$0	\$0	\$0		\$0.00
1790554		\$6,000	\$3,000	\$3,000	\$4,800		\$1,200
1790597		\$4,000	\$2,000	\$2,000	\$3,200		\$800
						=====	
Balance Due Gillis For Deposit With Clerk of the Court						\$0	=====
	Overpayment to be Returned by (Disgorged) from Gillis to Clerk of the Court						\$16,344.88

Case No.	Fee Rubric Phase	Fixed Fee Amount	Fees Paid To Gillis By Client	Fees Paid to Gillis by Trustee	Fees Permitted Under Fee Rubric	Balance Due Gillis For Deposit With Clerk of the Court	Overpayment to be Returned by Gillis to Clerk of the Court
1790601		\$4,000	\$4,000	\$0	\$3,200		\$800
1790707		\$4,000	\$2,000	\$2,000	\$3,200		\$800
1790719		\$4,000	\$2,000	\$2,000	\$3,200		\$800
1790848		\$6,000	\$2,000	\$3,024	\$4,800		\$224
1790871		\$4,000	\$0	\$4,000	\$3,200		\$800
1790956		\$6,000	\$3,000	\$3,000	\$4,800		\$1,200

1790999		\$4,000	\$2,000	\$2,000	\$3,200		\$800
1791002		\$4,000	\$2,000	\$2,000	\$3,200		\$800
1823378		\$4,000	\$2,000	\$2,000	\$3,200		\$800
1824799		\$4,000	\$2,000	\$1,800	\$3,200		\$600
1826180		\$4,000	\$2,000	\$2,000	\$3,200		\$800
1826787		\$4,000	\$2,000	\$2,000	\$3,200		\$800
1826794		\$4,000	\$2,000	\$2,000	\$3,200		\$800
1827287		\$4,000	\$2,000	\$2,000	\$3,200		\$800
1890080		\$4,000	\$2,000	\$2,000	\$3,200		\$800
1890216		\$4,000	\$2,000	\$2,000	\$3,200		\$800
1890278		\$4,000	\$2,000	\$2,000	\$3,200		\$800
1890393		\$4,000	\$2,000	\$2,000	\$3,200		\$800
1890647		\$6,000	\$6,000	\$0	\$4,800		\$1,200
1890730		\$4,000	\$2,000	\$2,000	\$3,200		\$800
1890731		\$4,000	\$2,000	\$2,000	\$3,200		\$800
1990047		\$4,000	\$2,000	\$1,200	\$3,200		\$0
1990138		\$4,000	\$2,000	\$2,000	\$3,200		\$800
1990175		\$6,000	\$3,000	\$3,000	\$4,800		\$1,200
1990224		\$4,000	\$2,000	\$1,000	\$3,200	\$200	
						=====	
Balance Due Gillis For Deposit With Clerk of the Court						\$200	=====
	Overpayment to be Returned by (Disgorged) from Gillis to Clerk of the Court						\$18,824.00

For the above identified cases, computing the attorney's fees permitted Mr. Gillis under the Fee Rubric, the amount of monies that Mr. Gillis must repay (disgorge) and the monies due Mr. Gillis under the Fee Rubric to be paid in the future are:

Amount Thomas Gillis Must Repay (disgorge) to the Clerk of the Court.....\$81,274.88

Amount Due Thomas Gillis in Chapter 13 Cases that
Russell Greer, the Chapter 13 Trustee shall disburse
Directly to the Clerk of the Court.....\$1,000.00

The above amounts are subject to adjustment with respect to whether for Phase III it is 80% of the fixed fee or 90% if Mr. Gillis pursues his appeal.

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

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

The Omnibus Motion of the United States Trustee, DCN: UST-4, having been presented to the court, and upon review of the US Trustee's Omnibus Motion, the arguments of counsel, the files in this case, the Fee Rubric adopted in this District to determine the allowable, compensation for Thomas O. Gillis as counsel for the debtor in the Chapter 13 cases pursuant to Local Bankruptcy Rule 2016-1 and 11 U.S.C. § 329 for each of the Chapter 13 cases, and good cause appearing.

IT IS ORDERED that the Motion is Granted and the allowable compensation for Thomas O. Gillis as counsel for the debtor in the Chapter 13 cases pursuant to Local Bankruptcy Rule 2016-1 and 11 U.S.C. § 329 for each of the Chapter 13 cases listed Addendum A hereto are the amounts specified for each case in said Addendum A, which is incorporated herein by this reference.

IT IS FURTHER ORDERED the specific amount of overpayments to Thomas O. Gillis in excess of the allowed amount in each Chapter 13 case is stated in Addendum A, the amount that Thomas O. Gillis must repay (disgorge) for amounts received in excess of the allowed compensation for each case, and the compensation to which Mr. Gillis is to be paid in the future from specific Chapter 13 cases that shall be disbursed by the Chapter 13 Trustee directly to the Clerk of the Court pursuant to this court's prior order adopting the Fee Rubric for all of Mr. Gillis' cases in this District (Order, Dckt. 150).

IT IS FURTHER ORDERED that Thomas O. Gillis shall immediately repay directly to the Clerk of the Court, to be deposited with the other monies relating to Mr. Gillis' fees the excessive fee amounts specified on Addendum A for each case, which amount totals **\$81,274.88**, which amounts are due upon the entry of this order.

This Order is without prejudice to the pending appeal by Thomas O. Gillis of whether the Phase III percentage of the Fee Rubric should be 80% or 90%, and the rights of any party in interest to seek an adjustment of the Fee Rubric based upon specific facts and circumstances of a specific case or common unique facts of a group of cases.

IT IS FURTHER ORDERED that all other relief in the Motion is denied without prejudice.

This Order constitutes a judgment (Fed. R. Civ. P. 54(a) and Fed. R.

Bankr. P. 7054, 9014) and may be enforced by the U.S. Trustee or designee pursuant to the Federal Rules of Civil Procedure and Federal Rule of Bankruptcy Procedure (including Fed. R. Civ. P. 69 and Fed. R. Bankr. P. 7069, 9014).

29. [20-00202-E-0](#) **IN THE MATTER OF THOMAS** **MOTION UNDER 11 U.S.C. 329 AND**
[UST-5](#) **OSCAR GILLIS, FEE RUBRIC** **105 AND FEDERAL RULE OF**
 BANKRUPTCY PROCEDURE 2017
 6-4-20 [47]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's former attorney, Debtor's current attorney, Chapter 13 Trustee, and parties requesting special notice on June 4, 2020. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

The Motion of the United States under 11 U.S.C. §§ 329 and 105 and Federal Rule of Bankruptcy Procedure 2017 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 of the United States under 11 U.S.C. §§ 329 and 105 and Federal Rule of Bankruptcy Procedure 2017 is granted and Thomas O. Gillis is allowed as reasonable compensation in the amount of \$1,200.00 for his representation of Debtor Ana Raya in bankruptcy case 19-90915, and is order to repay (disgorge) the \$800.00 in excess thereof he received from the Debtor to the Chapter 13 Trustee in the Raya Case, who will deposit the \$800.00 when received with the Clerk of the Court.

The United States Trustee, Tracy Hope Davis ("US Trustee") filed this Motion seeking review and disgorgement of fees paid by then-debtor, Ana M. Raya ("Debtor") to counsel, Thomas O. Gillis ("Counsel"). Trustee seeks adjustments to the Fee Rubric ^{FN1} and disgorgement of attorney fees pursuant to 11 U.S.C. § 329(b) and Local Rule 2016-1 in the amount of \$4,000.00 or to the extent the court finds excessive of reasonable fee from Thomas O. Gillis on the basis that Counsel failed to provide the reasonable value of services .

FN.1. The court adopted the following “rubric” if the court is asked to consider fees paid or promised in those cases in which Mr. Gillis was counsel and has received some or all of the opt-in-fee (1) Phase I (pre-petition through meeting of creditors) – 30% earned; (2) Phase II (meeting of creditors through initial confirmation) – 60% earned; (3) Phase III (confirmation to 90 days after Notice of Filed Claims) – 80% earned; and (4) Phase IV (discharge, closure, certifications, necessary lien clearances) – 100% (“Fee Rubric”). *In re Cervantes*, 2020 Bankr. Lexis 864 (Bankr. E.D. Cal. March 31, 2020), 21-22.

Trustee provides the following factual background in the Motion, which is accompanied by the Declaration of Patricia M. Vargas (Dckt. 50) and Declaration of Tina Spyksma (Dckt. 51), both Paralegal Specialists for the Office of the United States Trustee:

- A. Debtor filed a voluntary Chapter 13 petition (case no. 19-90915) on October 14, 2019 (“Petition Date”) with Mr. Gillis as the counsel on record. Case Dckt. 1. Russell D. Greer is the Standing Chapter 13 Trustee for the case. Case Dckt. 4.
- B. On April 30, 2019, approximately five months prior to the Petition Date, Counsel signed a stipulation with the California State Bar for his suspension. State Bar Stipulation, Exhibit L, Dckt. 52.
- C. Counsel elected for the “opt-in” fee of \$4,000.00 pursuant to Local Rule 2016-1 and executed the “Rights and Responsibilities” document. Case Dckt. 3
- D. On October 1, 2019. Counsel received \$2,000.00 from Debtor of the \$4,000.00 total fee charged. Case Dckt. 1.
- E. On December 2, 2019, approximately 49 days after the Petition Date, Counsel filed a Notice to the Court and Concerned Parties of Suspension of Attorney for Debtor. Case Dckt. 16. The Notice stated Counsel “has been suspended from practice of law beginning January 31, 2020 until reinstated.” *Id.* The Notice did not contain a certificate of service, indicating service to Debtor. *See id.*
- F. On December 4, 2019, Debtor appeared at the 341 meeting of creditors with Todd Whiteley. Trustee’s December 4, 2019 Case Docket Entry Statement.
- G. On December 11, 2019, Wells Fargo Bank, National Association as trustee for Option One Mortgage Loan Trust 2007-3, Asset-Backed Certificates, Series 2007-3 (“Creditor”) filed an objection to Debtor’s plan on the basis that it does not cure Creditor’s pre-petition arrearage. Case Dckt. 17. Counsel did not respond to Creditor’s objection. *See* Case Dckt. The court sustained Creditor’s objection. Case Dckt. 29.

- H. As of the filing date of this Motion, no plan has been confirmed.
- I. On May 3, 2020, approximately three months after Counsel's suspension took effect, Mark J. Hannon filed a Substitution of Attorney (Case Dckt. 33), which the court approved on May 7, 2020 (Case Dckt. 35).
- J. On May 12, 2020, Debtor filed her first amended Chapter 13 Plan and corresponding motion to confirm, set for hearing on June 16, 2020. Case Dckts. 38, 36. Chapter 13 Trustee filed an objection due to Debtor's \$720.00 delinquency in payments. Case Dckt. 41.

A review of the case docket confirms the above facts and is cited to above.

Counsel's Response

Counsel filed a Response on June 30, 2020, stating the Motion should be denied as it is "vague," "uncertain," and does not provide a basis for a departure from the Fee Rubric. Dckt. 157. First, Mr. Gillis alleges there were approximately 25 to 30 cases in the "'pipeline' that were not yet confirmed" when he was suspended on February 15, 2020. *Id.* Counsel engaged Mr. Hannon to substitute in on those cases, and "all but a few including the Ana Raya case have now been confirmed." *Id.*

Additionally, Counsel asserts Debtor's case was filed and a feasible plan was proposed. Debtor's plan was not confirmed because it did not cure Creditor's arrearage, and Debtor is delinquent in \$720.00. Debtor also asserts there are ongoing efforts to confirm a plan for Debtor. Because of Debtor's delinquency and Debtor's inability to cure before the June 16, 2020 confirmation hearing, a new plan has been prepared and "out for signatures." *Id.*

Furthermore, Counsel states he is contemplating filing a motion to enable him to conduct a Rule 2004 examination of Michael Meyer and the Office of the United States Trustee to determine whether his Title VI rights under the Civil Rights Act have been violated. Counsel alleges "a racial campaign is being conducted by the [United States Trustee] and Michael Meyer against [Counsel] and his Hispanic clients," including this instant Motion. Counsel questions whether the court is aware that trustee does not ask interpreters to interpret the introductory remarks. Counsel illustrates an incident where he asked "Trustee Edmonds, who is fluent in Spanish, [to] give the warnings in Spanish, but was denied as Trustee Edmonds noted that "she is not allowed to do that." *Id.*

Counsel then asks whether the court is aware of the Mr. Meyer's audit of his cases, which clients have informed him are "offensive and biased." *Id.* Counsel alleges Mr. Meyer of recommending his friends, particularly white, at the end of his audits. Counsel wishes to know how many non-Latino clients the United States trustee has examined in the last year, compared to "at least nine of [his] Hispanic clients." *Id.* Finally, Counsel alleges that the Motion is part of this racial campaign because "[i]f it is too obvious to attack the minority directly, the offending party attack[s] the attorney who represents them to cut off the Hispanic's free access to the Courts." *Id.*

If the court grants this Motion and declines to use the Fee Rubric, Counsel requests the case become a contested matter so that he may conduct discovery directed to Mr. Meyers and the Office of the United States Trustee to establish a possible pattern of racial discrimination.

US Trustee's Reply

Tracy Hope Davis ("US Trustee"), filed a Reply on July 6, 2020. Dckt. 176. Trustee requests the court grant the Motion and reject Counsel's Response on the basis that:

- A. Counsel fails to meet his burden of establishing that attorney fees received in Debtor's case are reasonable.
- B. Counsel fails to rebut allegations pertaining to Debtor's case set forth in the Motion, specifically:
 - 1. his lack of appearance at the 341 meeting of creditors on December 4, 2019;
 - 2. his failure to respond to Creditor's objection of Debtor's plan;
 - 3. his failure to file Debtor's amended file and the lack of plan confirmation;
 - 4. his failure to address whether he informed Debtor of his suspension even though he filed a notice with the court; and
 - 5. his failure to address why he did not disclose that he would be unable to perform the "Rights and Responsibilities" entailed in Local Rule 2016-1 when accepted the "opt-in" fee.

Furthermore, the US Trustee states Counsel, instead of refuting the allegations, raises other allegations without providing any factual and legal support for his arguments.

Additionally, the US Trustee notes that although Counsel has not challenged the court's jurisdiction, it is unclear to the US Trustee why Mr. Gillis characterizes the instant Motion as one for a mandatory injunction. The US Trustee asserts the review of the attorney fees and disciplinary proceedings "fit well within the ambit of a core proceeding" under 11 U.S.C. § 157(b)(2)(A). The US Trustee also asserts the court's ability to review the reasonableness of fees under 11 U.S.C. § 329(b).

DECISION

Thomas O. Gillis is an attorney who had a very prolific practice in the Eastern District of California Bankruptcy Court for a number of years. When the undersigned judge Chief Judge first came on the bench, Mr. Gillis focused on doing Chapter 11 and 13 cases. That evolved into a Chapter 13 practice in which his office focused on providing legal services in Chapter 13 consumer restructures and Chapter 7 liquidation for Hispanic clients who had limited or nonexistent English language skills.

In the late 2010's that practice ceased when Mr. Gillis was suspended by the State Bar of California. Mr. Gillis signed a stipulation on April 30, 2019, with the State Bar for a two year suspension from the practice of law. The Chief Justice of the California Supreme Court issued her order for his suspension on November 1, 2019, with the suspension effective December 1, 2019. Mr. Gillis made a request for a continuance to allow him additional time to assist his clients in obtaining

replacement counsel. Pursuant to that request the State Bar Court delayed the suspension until January 31, 2020. On January 28, 2020, Mr. Gillis made a second request for the extension of the start of his suspension until March 15, 2020, so that he could have additional time for assisting his clients. The State Bar granted a final delay in Mr. Gillis suspension, ordering that is commenced on February 15, 2020, and ordering Mr. Gillis not to accept any new clients. ^{FN. 1.}

FN. 1. Ruling on Chapter 13 Trustee Objections to Attorney Fee Compensation, 19-12274, Dckt. 42; Supreme Court Order of Suspension, S256770 (State Bar Court Nos. 16-O-10780 (17-O-02624; 17-O-04790)), Filed November 1, 2019; Order Filed February 7, 2020, State Bar Court of California, *In re Gills*, 16-O-10780; Order Filed November 27, 2019, State Bar Court of California, *In re Gills*, 16-O-10780.

In the Raya bankruptcy case, Mr. Gillis filed for the Debtor on October 14, 2019. This was well after his stipulation for suspension had been filed, was percolating in at the State Bar for five months, and the suspension to be issued by the Chief Justice imminent. When filing the case, there was little room for Mr. Gillis to provide legal services to Debtor Raya.

Mr. Gillis was not able to confirm a Chapter 13 plan prior to his February 15, 2020 (twice extended) suspension commencing.

Application of Fee Rubric

In considering this request, the court begins with the Fee Rubric itself. As discussed in this and the related proceedings, this court and the bankruptcy judges in this District have adopted the Fee Rubric as a refinement of the fixed fee provided in Local Bankruptcy Rule 2016-1. The Fee Rubric determines the reasonable, non-excessive fees in general for the stage of the representation that Mr. Gillis was able to get his former client. As set forth in the Joint Decision, the judges recognize that the Fee Rubric is subject to adjustment on a case by case basis.

The court has addressed Mr. Gillis' opposition based on jurisdiction, this being a core matter proceeding, the court not ordering certifications, and other matters in the Rulings on the U.S. Trustee's Motions UST-3 and UST-4. It appears that much of what Mr. Gillis argues against was requested in those motions and not deleted when he "cut and pasted" analysis and argument from his responses in those pleadings to this one. Mr. Gillis has also addressed the issue of "venue," recognizing and accepting that these Fee Rubric matters will be determined by the Chief Bankruptcy Judge for the District.

The Joint Ruling was issued therefrom establishing a "Fee Rubric" which set a percentage amount of the fixed fee for the legal services provided based on the status of the case. Ruling on Chapter 13 Trustee Objection to Attorney Fee Compensation; *In re Cervantes* and *In re Chinchilla*; 19-12274, Dckt. 42 ("Joint Ruling"). The Fee Rubric has been adopted by all bankruptcy judges in this District for Mr. Gillis' cases and ordered effective in all such cases. Order, *In re Matter of Thomas Oscar Gills*, 20-202, Dckt. 150. Mr. Gillis has agreed to the application of the Fee Rubric (rather than having 148 separate fee motions), with one issue that is the subject of an appeal to the Bankruptcy Appellate panel about whether the Phase III percentage should be 80% or 90%. *Id.*

The Joint Ruling adopted by all Bankruptcy Judges in this District established the following Fee Rubric for determination of Mr. Gillis' fees in his Chapter 13 cases:

Phase	Services Provided	Aggregate Percentage of No-Look Fee Earned
Phase I	Pre-petition through meeting of creditors	30%
Phase II	Meeting of Creditors through initial confirmation	60%
Phase III	Confirmation to 90 days after Notice of Filed Claims	80% ^{FN. 2}
Phase IV	Discharge, closure, certifications, necessary lien clearances	100%

FN. 2. It is this percentage amount that Mr. Gillis has identified as being the subject of the pending appeal before the Bankruptcy Appellate Panel, with Mr. Gillis asserting it should be 90%.

In the Raya Case, Mr. Gillis was able to complete Phase I of the legal services under the Fee Rubric for the fixed fee of \$4,000. Thus, Mr. Gillis allowed fees are \$1,200.00 (\$4,000 x 30%), and all amount in excess thereof are unreasonable and not allowed.

As stated in the Disclosure of Compensation (Dckt. 1 at 51), Mr. Gillis was paid \$2,000 by the debtor prior to the commencement of the Raya Case as part of the Local Bankruptcy Rule 2016-1 \$4,000 fixed fee he and the debtor elected to have his be paid for representing the debtor through the entire case. Thus, Mr. Gillis has been paid \$800.00 more than the fees allowed.

Once a question has been raised about the reasonableness of an attorney's fee under section 329, the attorney bears the burden of establishing that the fee is reasonable." 3 COLLIER ON BANKRUPTCY P 329.01 (16th 2019). Section 329(b) provides that if "such compensation exceeds the reasonable value of any such services, the court may cancel any such agreement, or order the return of any such payment, to the extent excessive, to ... the entity that made such payment." 11 U.S.C. 329(b).

On the subject of disgorgement, Collier states:

The bankruptcy court has the authority and responsibility to look for ethical breaches when examining fee transactions. Compensation may be denied, particularly when an attorney intentionally misrepresents facts or deceives the court. The bankruptcy court may order disgorgement of fees, award costs, or impose other penalties when an attorney is found to have

committed a fraud on the court or when an attorney has a conflict of interest. A bankruptcy court does not have to calculate how much the unethical conduct depleted the value of the attorney's service, but may, in its discretion, deny compensation in whole or in part. It may also order disgorgement of all fees already paid.

3 COLLIER ON BANKRUPTCY P 329.04 (16th 2019).

Mr. Gillis has been paid \$800.00 in excess of the fees that he has been allowed and such excessive amounts shall be repaid (disgorged) by Mr. Gillis to Russell Greer, the Chapter 13 Trustee in the Raya Case. Chapter 13 Trustee Greer shall disburse the \$800.00 to the Clerk of the Court as provided in the Order Adopting Fee Rubric (Dckt. 150), and the Clerk of the Court shall hold said monies pending further order of the court.

Substitution of Counsel

Debtor Ana Rya is represented by Mark Hannon, Esq., who substituted in the place of Mr. Gillis by order of the court on May 7, 2020. 19-90915; Order, Dckt. 34.

The Court shall issue an order in substantially the following form:

The Court's Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing on this Matter.

Upon review of the Motion of the United States under 11 U.S.C. §§ 329 and 105 and Federal Rule of Bankruptcy Procedure 2017, opposition stated at the hearing, considering of the pleadings in support and against, the Fee Rubric Adopted by this Court for the Chapter 13 Cases in which Thomas O. Gillis cannot provide representation due to his suspension from the practice of law, Thomas O. Gillis having been paid \$2,000.00 in compensation by the Debtor for services he is to provide in connection with bankruptcy case 19-90915, the arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and Thomas O. Gillis, Esq., shall repay (disgorge) or pay from other monies if he is not holding the monies paid to him by the Debtor the sum of \$800.00 to Russell Greer, the Chapter 13 Trustee in the Ana Raya bankruptcy case, No. 19-90915, immediately upon the entry of this order. Chapter 13 Trustee Russell Greer shall deposit the \$800.00 received from Thomas O. Gillis with the Clerk of the Bankruptcy court who shall hold such monies pursuant to the Order Adopting Fee Rubric (Dckt. 150) pending further order of the court.

This Order constitutes a judgment (Fed. R. Civ. P. 54(a) and Fed. R. Bankr. P. 7054, 9014) and may be enforced pursuant to the Federal Rules of Civil Procedure and Federal Rule of Bankruptcy Procedure (including Fed. R. Civ. P. 69 and Fed. R. Bankr. P. 7069, 9014).

FINAL RULINGS

30. [13-31900](#)-E-13 BENJAMIN/MARGARITA MOTION TO AVOID LIEN OF
[MJH-2](#) DUENAS CITIBANK (SOUTH DAKOTA) N.A.
Mark Hannon 6-15-20 [93](#)

Final Ruling: No appearance at the July 14, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on June 15, 2020. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

This Motion requests an order avoiding the judicial lien of Citibank (South Dakota) N.A. ("Creditor") against property of the debtors, Benjamin Duenas and Margarita Duenas ("Debtor") commonly known as 8414 Kingmont Way, Elk Grove, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$6,790.01. Exhibit A, Dckt. 97. An abstract of judgment was recorded with Sacramento County on December 1, 2011, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$215,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$368,000.00 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(5) in the amount of \$6,790.01 on

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT-DRAFTED ORDER

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Benjamin Duenas and Margarita Duenas ("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 judgment lien of Citibank (South Dakota) N.A., California Superior Court for Sacramento County Case No. 34-2010-00644743, recorded on December 1, 2011, Book 20111201 and Page 1116, with the Sacramento County Recorder, against the real property commonly known as 8414 Kingmont Way, Elk Grove, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

Final Ruling: No appearance at the July 14, 2020 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, and Office of the United States Trustee on June 12, 2020. 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). The defaults of the non-responding parties and other parties in interest are entered.

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 \$8,350.00.

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. 67. Debtor is the owner of a 2015 Chrysler 200 Limited ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$8,350.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Trustee does not oppose the motion and notes that Creditor's claim is included in the proposed plan and that Creditor filed Proof of Claim No. 1 for \$23,077.60, claiming \$10,350.00 as secured. Dckt. 70.

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 \$23,077.60. Proof of Claim, No. 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 \$8,350.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion to Value 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 \$8,350.00, 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 \$8,350.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

32.	<u>20-21836</u> -E-13 <u>SLL-1</u> 32 thru 33	EUGENE LISOWSKI AND ERIN KIRCHENBERG Stephen Labiak	MOTION TO VALUE COLLATERAL OF SAN DIEGO COUNTY C.U. 5-28-20 <u>[27]</u>
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Final Ruling: No appearance at the July 14, 2020 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee and Creditor on May 28, 2020. By the court’s calculation, 47 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.

<p>The Motion to Value Collateral and Secured Claim of San Diego County Credit Union (“Creditor”) is granted, and Creditor’s secured claim is determined to have a value of \$11,775.00.</p>

The Motion filed by Eugene Lisowski and Erin Kirchenberg (“Debtor”) to value the secured claim of San Diego County Credit Union (“Creditor”) is accompanied by Debtor’s declaration. Declaration,

Dckt. 30. Debtor is the owner of a 2013 Toyota Sierra (“Vehicle”). Debtor seeks to value the Vehicle at a replacement value of \$11,775.00 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 is not opposed to the motion as Creditor is included in the plan as a Class 2(B) claim. Dckt. 38. Trustee notes that Creditor filed Proof of Claim No. 4 with a secured claim for \$19,540.31. *Id.*

DISCUSSION

The lien on the Vehicle’s title secures a purchase-money loan incurred on August 18, 2017, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$19,540.31. Proof of Claim, No. 4. Therefore, Creditor’s claim secured by a lien on the asset’s title is under-collateralized. Creditor’s secured claim is determined to be in the amount of \$11,775.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion to Value Collateral and Secured Claim filed by Eugene Lisowski and Erin Kirchenberg (“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 San Diego County Credit Union (“Creditor”) secured by an asset described as 2013 Toyota Sierra (“Vehicle”) is determined to be a secured claim in the amount of \$11,775.00, 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 \$11,775.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

Final Ruling: No appearance at the July 14, 2020 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtors and Debtors’ Attorney on May 20, 2020. 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.

The court continued the matter for a final hearing on July 14, 2020.

The Objection to Confirmation of Plan is overruled.

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

A. Debtors have failed to file a Motion to Value Collateral.

DISCUSSION

Trustee’s objection has been addressed as set forth below.

Debtor’s Reliance on Motion to Value Secured Claim

A review of Debtors’ Plan shows that it relies on the court valuing the secured claim of San Diego Credit Union. Debtors filed the Motion to Value the Secured Claim of San Diego Credit Union on May 28, 2020, with a hearing set for July 14, 2020. Dckt. 27.

June 9, 2020 Hearing

Debtor having filed a Motion and setting it for hearing and that being the only grounds stated as the basis for objecting to confirmation, the court continues the hearing on the Trustee’s Objection.

Valuation

Debtor's Motion to Value the Secured Claim of San Diego Credit Union was granted and the secured claim valued at \$11,775.00 as stated in Debtor's Plan.

The Motion to Value having been decided in favor of Debtor, and that being the only basis for the objection, the Objection is overruled and the Plan is confirmed.

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

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

The 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 Eugene Lisowski and Erin Kirchenberg's ("Debtor") Chapter 13 Plan filed on March 30, 2020, 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.

34.	<u>20-22540</u> -E-13 <u>ETW</u> -2	RAKESHNI SHARMA Richard Jare	OBJECTION TO CONFIRMATION OF PLAN BY USRE TRUST 6-15-20 [39]
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Final Ruling: No appearance at the July 14, 2020 hearing is required.

Pursuant to the Notice of Continued Hearing, the hearing on the Objection to Confirmation of Plan has been set for 3:00 p.m. on July 21, 2020, and the matter is removed from this calendar. Dckt. 42.

Final Ruling: No appearance at the July 14, 2020 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 29, 2020. 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).

<p>The Motion to Confirm the Amended Plan is granted.</p>
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The debtor, William Rodderick Anderson ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly payments of \$2,400.00 for 13 months commencing June 25, 2020, followed by monthly payments of \$3,000.00 for the remainder of the plan, and a 100 percent dividend to general unsecured claims in the amount of \$25,691.02. Debtor has already paid \$5,200.00 through May 18, 2020. Amended Plan, Dckt. 57. 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 Response on June 17, 2020. Dckt. 64. Trustee requests the court take into consideration that Section 3.05 of Debtor's Amended Plan fails to list \$150.00 that was paid prior to filing the case, instead stating the amount as \$0.00. *Id.* Trustee would have no objection for this to be corrected in the order confirming the plan. *Id.*

DEBTOR'S REPLY

Debtor filed a Reply on June 18, 2020, Dckt. 66. Debtor acknowledges the error in section 3.05 of the Amended Plan and proposes to amend the paragraph to reflect the \$150.00 paid as attorney's fees prior to filing the case. Debtor included a proposed order which reflects the change requested by Trustee. Exhibit 1, Dckt. 67.

DISCUSSION

Debtor has agreed to the Section 3.05 correction suggested by Trustee. No other grounds for objection have been presented.

The Amended Plan complies with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is confirmed.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, William Rodderick Anderson (“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 29, 2020, as amended with the following is confirmed:

- A. Section 3.05 of Debtor’s amended plan shall read: “Debtor’s attorney of record was paid \$150.00 prior to the filing of the case. Subject to prior court approval, additional fees of \$ 3,850.00 shall be paid through this plan. Debtors' attorney will seek the court's approval by complying with Local Bankruptcy Rule 2016-1(c);”

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 14, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on June 10, 2020. By the court's calculation, 34 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 Americredit Financial Services, Inc. ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$9,800.00.

The Motion filed by Derwin Darby and Gloria Ann Darby ("Debtor") to value the secured claim of Americredit Financial Services, Inc. ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 19. Debtor is the owner of a 2015 Mitsubishi Outlander Sport GT ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$9,800.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Trustee's Non-Opposition

The Chapter 13 Trustee David Cusick ("Trustee") filed a Non-Opposition on June 24, 2020, Dckt. 23.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on June 24, 2015, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$12,194.23. Proof of Claim, No. 6-1. 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 \$9,800.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion to Value Collateral and Secured Claim filed by Derwin Darby and Gloria Ann Darby ("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 Americredit Financial Services, Inc. ("Creditor") secured by an asset described as 2015 Mitsubishi Outlander Sport GT ("Vehicle") is determined to be a secured claim in the amount of \$9,800.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$9,800.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

Final Ruling: No appearance at the July 14, 2020 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's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 27, 2020. 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 Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<p>The Motion to Confirm the Amended Plan is granted.</p>
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11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Glen Burton Lewis ("Debtor") has provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response indicating non-opposition on June 16, 2020. Dckt. 52. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Glen Burton Lewis ("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 27, 2020, 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.

38. [19-23292](#)-E-13 **THOMAS PEARSON** **CONTINUED MOTION FOR**
[PLC-11](#) **Peter Cianchetta** **COMPENSATION BY THE LAW**
 OFFICE OF CIANCHETTA
 & ASSOCIATES FOR
 PETER L. CIANCHETTA, DEBTORS
 ATTORNEY(S)
 4-14-20 [125]

Final Ruling: No appearance at the July 14, 2020 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on April 14, 2020. By the court’s calculation, 14 days’ notice was provided. 14 days’ notice is required. L.B.R. 9014-1(f)(2), applicable in contested matters.

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

The Motion for Attorney’s Fees is dismissed without prejudice.

Peter Cianchetta of Cianchetta & Associates (“Movant”) filed this Motion seeking prevailing party fees in the amount of \$2,662.50 pursuant to FRBP §5054(b)(2) and FRCP §56(d) based on the contract between the parties.

On April 30, 2020, Movant filed a “Request to Drop Motion,” stating that the parties have settled this matter and request the court “drop the hearing set for July 14, 2020.” Request, Dckt. 136.

An Opposition to this Motion has been filed by CACH, LLC. Dckt. 135. CACH, LLC did not join with Movant requesting that the hearing be “dropped.” The court ordered that supplemental opposition be filed. None was filed.

The court construes the Request to be an ex parte motion to dismiss the present motion

pursuant to Federal Rule of Civil Procedure 41(a)(2), as incorporated into Federal Rule of Bankruptcy Procedure 7041 and 9014.

The court dismisses the present motion without prejudice, such dismissal being consistent with the request of Movant and the conduct of CACH, LLC.

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

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

The Motion for Attorney's Fees filed by Peter Cianchetta having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, Movant having made an ex parte motion to dismiss this Motion, and good cause appearing,

IT IS ORDERED that the Motion For Attorney's Fees is dismissed without prejudice.