

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

July 16, 2024 at 2:00 p.m.

1.	<u>24-22941</u>-E-13 <u>GEL-1</u>	CYNTHIA MILLER Gabriel Liberman	MOTION TO EXTEND AUTOMATIC STAY O.S.T 7-9-24 [10]
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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.

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

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

The court set the hearing for July 16, 2024. Docket 10. The court ordered Movant to serve all affected creditors by first class mail no later than July 12, 2024.

The Motion to Extend the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). 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 -----
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The Motion to Extend the Automatic Stay is granted, with the Stay extended pursuant to 11 U.S.C. § 362(c)(3)(B) through and including 11:59 p.m. on August 30, 2024.

The hearing is continued to 2:00 p.m. on August 20, 2024.

Cynthia Denise Miller (“Debtor”) seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor’s second bankruptcy petition

pending in the past year. Debtor's prior bankruptcy case (No. 24-21044) was dismissed on April 15, 2024, after Debtor failed to timely file documents. *See Order, Bankr. E.D. Cal. No. 24-21044, Dckt. 17, April 15, 2024.* Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was not dismissed due to the willful inadvertence or negligence of Debtor. Decl. 2:4, docket 12. She determined that a workout with her creditors outside of a bankruptcy was a better alternative and decided to let the Prior Case dismiss. *Id.* at 2:5-6. Those efforts appear to have failed, so Debtor files the instant case to stop a Trustee Sale scheduled on July 8, 2024 against her primary residence located at 512 Ojai, Granite Bay, CA 95746 ("Property"). *Id.* at 2:11-12. Debtor plans to actively prosecute this case and reorganize her debts.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). As this court has noted in other cases, Congress expressly provides in 11 U.S.C. § 362(c)(3)(A) that the automatic stay **terminates as to Debtor**, and nothing more. In 11 U.S.C. § 362(c)(4), Congress expressly provides that the automatic stay **never goes into effect in the bankruptcy case** when the conditions of that section are met. Congress clearly knows the difference between a debtor, the bankruptcy estate (for which there are separate express provisions under 11 U.S.C. § 362(a) to protect property of the bankruptcy estate) and the bankruptcy case. While terminated as to Debtor, the plain language of 11 U.S.C. § 362(c)(3) is limited to the automatic stay as to only Debtor. The subsequently filed case is presumed to be filed in bad faith if one or more of Debtor's cases was pending within the year preceding filing of the instant case. *Id.* § 362(c)(3)(C)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209–10 (2008). An important indicator of good faith is a realistic prospect of success in the second case, contrary to the failure of the first case. *See, e.g., In re Jackola*, No. 11-01278, 2011 Bankr. LEXIS 2443, at *6 (Bankr. D. Haw. June 22, 2011) (citing *In re Elliott-Cook*, 357 B.R. 811, 815–16 (Bankr. N.D. Cal. 2006)). Courts consider many factors—including those used to determine good faith under §§ 1307(c) and 1325(a)—but the two basic issues to determine good faith under § 362(c)(3) are:

- A. Why was the previous plan filed?
- B. What has changed so that the present plan is likely to succeed?

In re Elliot-Cook, 357 B.R. at 814–15.

Debtor has sufficiently demonstrated the case was filed in good faith under the facts of this case and the prior case for the court to extend the automatic stay. Debtor is actively prosecuting the instant case, already having filed the required Schedules and a Chapter 13 Plan. *See Dockets 1, 3.* Debtor also informs the court she let her case be dismissed due to her working out deals outside of bankruptcy, but those efforts having failed, she now turns to prosecute a meaningful repayment plan under the protection of the Bankruptcy Code.

The Motion is granted, and the automatic stay is extended through and including 11:59 p.m. on August 30, 2024, for all purposes and parties, unless terminated by operation of law or further order of this court.

The final hearing on this Motion shall be conducted at 2:00 p.m. on August 20, 2024. Debtor shall provide notice of the continued hearing on or before July 22, 2024, with written oppositions, if any, filed and served on or before August 5, 2024; and replies, if any, filed and served on or before August 12, 2024.

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

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

The Motion to Extend the Automatic Stay filed by Cynthia Denise Miller (“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 on an interim basis, and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court, through and including 11:59 p.m. on August 30, 2024.

IT IS FURTHER ORDERED that the final hearing on this Motion shall be conducted at **2:00 p.m. on August 20, 2024**. Debtor shall provide notice of the continued hearing on or before July 22, 2024, with written oppositions, if any, filed and served on or before August 5, 2024; and replies, if any, filed and served on or before August 12, 2024.

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, and Office of the United States Trustee on May 16, 2024. By the court's calculation, 61 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is granted.
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11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Romy Elizabeth Oster ("Debtor") has provided evidence in support of confirmation. *See* Decl., Docket 82. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on July 2, 2024. Docket 91.

Trustee does request in his Non-Opposition that the months for which payments have been made are clearly corrected in the Order, Debtor's Plan misstating specific dates.

Reviewing the additional provisions in Section 7, ¶ 7.02, of the proposed Plan, the payments required by the Debtor are stated to be \$2,506.73 for forty-six (46) months and \$3,000.00 for twelve (12) months, and \$0.00 for two (2) months of the sixty (60) months of the Plan. :

A. \$2,506.73 for months **September 2023 - February 2024** (7 monthly payments)
This Bankruptcy Case was filed on September 4, 2023. It appears that the payment commencement date would be at the earliest September 2023.

B. \$0.00 for months **March and April 2024** (2 monthly payments)

However, the \$2,506.73 payments of seven (7) months, if they began in September 2023, would run through March 2024, and the \$0.00 months would be April and May 2024.

C. \$2,506.73 for months **May 2024 - July 2027** (39 monthly payments)

These payments would actually be for the months June 2024 - August 2027.

D. \$3,000.00 for months November 2027 - September 2028 (9 monthly payments)

By starting in November 2027, there appears to be a multi month gap of no payments.

With the September 5, 2023 filing of this case and the last payment to be made in September 2028, there appear to be sixty (60) plan months.

dates: **XXXXXXX**

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

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Romy Elizabeth Oster (“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 16, 2024, as amended to state **XXXXXXX**, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, including the forgoing amendments, 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, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on June 26, 2024. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

1. The debtor Kimberly Joan Green ("Debtor") may not be able to make plan payments because she recently lost her job, which the income from her job was going to fund her Plan. Obj. 2:3-9, Docket 18.

Trustee submits the Declaration of Trina Hayek to authenticate the facts alleged in the Objection. Decl., Docket 20.

DISCUSSION

Infeasible Plan

Trustee alleges that the Plan is not feasible. 11 U.S.C. § 1325(a)(6). Without her source of income, Debtor cannot afford making plan payments. Debtor testified at the 341 Meeting that she will have a new job soon. In confirming having a new job, at the hearing, **XXXXXXX**.

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

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

The Objection to 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 **XXXXXXX**.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, attorneys of record who have appeared in the case, creditors, parties requesting special notice, and Office of the United States Trustee on July 2, 2024. By the court’s calculation, 14 days’ notice was provided. 14 days’ notice is required.

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

<p>The Motion to Employ is granted.</p>
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Michael William Yeaman and Dorothy Ann Yeaman (“Debtor”) seeks to employ Zafar Haider (“Broker”) of Help-U-Sell Capital City pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Debtor seeks the employment of Broker to sell their real property commonly known as 9944 Red Ginger Way, Elk Grove Ca 95757 (“Property”).

Debtor argues that Broker’s appointment and retention is necessary to sell the Property, reduce their expenses, and fund a Chapter 13 Plan. Decl. ¶ 3, Docket 47.

Zafar Haider testifies that he will market and sell the Property. Decl. ¶ 4, Docket 46. Zafar Haider testifies he and the firm do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys. *Id.* at ¶ 7.

Pursuant to § 327(a), a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the

trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

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

Taking into account all of the relevant factors in connection with the employment and compensation of Broker, considering the declaration demonstrating that Broker does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Zafar Haider of Help-U-Sell Capital City as Broker for the Chapter 13 Estate on the terms and conditions set forth in the Residential Listing Agreement filed as Exhibit A, Dckt. 45. Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

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

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

The Motion to Employ filed by Michael William Yeaman and Dorothy Ann Yeaman ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Employ is granted, effective June 16, 2024, and Debtor is authorized to employ Zafar Haider of Help-U-Sell Capital City as Broker for Debtor on the terms and conditions as set forth in the Residential Listing Agreement filed as Exhibit A, Dckt. 45.

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditors, Parties requesting special notice, and Office of the United States Trustee on April 30, 2024. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

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

July 16, 2024 Hearing

The court continued the hearing on this matter upon agreement of the parties to allow Debtor to file necessary documents and become current under the proposed Plan. A review of the Docket on July 10, 2024 reveals Trustee filed a Status Report with the court on July 1, 2024. Docket 113. Trustee informs the court:

1. Trustee made a payment of \$1,557.58 to U.S. Bank, which was returned on May 23, 2024. Status Report 1:22-24, Docket 113.
2. Debtor has not provided tax returns for the year 2022, where the IRS proof of claim does not show the returns for that year. *Id.* at 1:25-2:2.
3. Debtor is delinquent \$350, while a payment is pending, Debtor has had eight payments pending not clear in the past. *Id.* at 2:3-6.

At the hearing, **XXXXXXX**

REVIEW OF THE MOTION

The debtor, Tema Kay Robinson (“Debtor”), seeks confirmation of the Third Amended Plan. The Amended Plan provides for Debtor having paid a total of \$8,126 to the Chapter 13 Trustee through April 2024 with monthly payments of \$350 to begin from May, 2024 for the remaining 54 months of the Plan. Amended Plan, Docket 89. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

Debtor and creditor U.S. Bank National Association (“Creditor”) filed a Stipulation with the court on May 22, 2024, clarifying the language surrounding Creditor’s treatment under the Plan. Docket 97. Creditor and Debtor propose the following language is appropriate in addressing how Creditor’s Claim is to be treated:

Due to payment by payment to Creditor under the California Mortgage Relief program (“HAF”), Creditor states that the subject loan is contractually current through April 30, 2024 due to receipt of \$71,698.12 from HAF and \$4,672.74 from the Chapter 13 Trustee for post-petition payments; no payments have been received from the Chapter 13 Trustee for pre-petition arrears. Creditor shall timely amend the pre-petition arrears amount stated in its Proof of Claim, filed as Claim No. 2 on the Claims Register herein (the “POC”), to the amount of \$4,672.74 which represents the amounts already paid by the Chapter 13 Trustee as this was included when calculating the HAF proceeds such that Creditor remains entitled to retain the funds.

Id. at p. 2:7-13.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on May 21, 2024. Docket 94. Trustee opposes confirmation of the Plan on the basis that:

1. The Plan was not proposed in good faith in violation of 11 U.S.C. § 1325(a)(3). The case was filed in October of 2023 without a Plan having been confirmed. Trustee has issued a check for the ongoing mortgage payment dated on April 30, 2024, in the amount of \$1,557.58 pursuant to the prior Plan. Trustee does not believe either Trustee nor Creditor can determine how that payment is now to be treated. Additionally, Debtor has filed new Schedules marked as amended, not supplemental, which appears to be in error. *Id.* at ps: 1:23-2:5.
2. Debtor may have not filed her 2022 federal tax return in violation of 11 U.S.C. § 1325(a)(9). *Id.* at p. 2:6-8.
3. Debtor has filed “Amended” Schedules I and J, which correct the errors in the original Schedules dating back to the October 12, 2023 filing of this Bankruptcy Case.

DISCUSSION

Good Faith Requirement of 11 U.S.C. § 1325(a)(3)

11 U.S.C. § 1325(a)(3) states:

(a) Except as provided in subsection (b), the court shall confirm a plan if—

...

(3) the plan has been proposed in good faith and not by any means forbidden by law;

The Ninth Circuit has ruled “[a] bankruptcy court must inquire whether the debtor has misrepresented facts in his plan, unfairly manipulated the Bankruptcy Code, or otherwise proposed his Chapter 13 plan in an inequitable manner” in ruling on whether a Plan was proposed in bad faith. *In re Goeb*, 675 F.2d 1386, 1390 (9th Cir. 1982).

Here, Debtor has had problems confirming a Plan, but Debtor has been making monthly payments leading up to this potential confirmation. There is not enough evidence before the court that the Third Amended Plan has not been proposed in good faith.

Debtor has also entered into a Stipulation with Creditor that may resolve Trustee’s concern over having made the \$1,557.58 payment pursuant to the prior Plan.

At the hearing, counsel for the Trustee reported that Debtor is still delinquent. A TFS payment is scheduled to be commenced on June 4, 2024. In the past, Debtor has had five TFS prior payments did not go through.

Amended or Supplemental Schedules

Debtor here (and Debtor’s attorney in other cases) is checking the box indicating subsequently filed Schedules are “amended” when the Schedules may actually be supplemental, and vice versa. Amended Schedules seek to amend the originally filed Schedules, correcting any information that may have been misreported. Information in the Amended Schedules will date back to the date of the originally filed Schedules. There is no change of circumstances when Amended Schedules are filed as the Amended Schedules seek to correct errors relating to the originally filed Schedules.

Supplemental Schedules on the other hand indicate a later change of circumstances, whether it be Debtor has received new employment or otherwise needs to update the court on new information that has occurred sometime after the original Schedules were filed. Supplemental Schedules do not date back to the originally filed Schedules.

Here, Debtor has checked the box for “amended” regarding the most recently filed Schedules at Dockets 91, 92, and 93. If the Schedules are actually amended, then any information in the Amended Schedules would relate back to the original Schedules, so information regarding any previous pleadings Debtor filed under penalty of perjury would have been misreported.

On Original Schedule I (Dckt. 22 at 28-29), Debtor reports having monthly take-home income of \$6,089.76. On original Schedule J Debtor states having monthly expenses of only (\$2,988.90) for her family unit of three, the Debtor and two dependents - her 75 year old mother and her minor child. Dckt. 22 at 30-31. On Original Schedules I and J, the court does not see any provision for Debtor's non-employment business income of \$2,150 a month. On Original Schedule J, there are no expenses for rent or mortgage payment, property insurance, and property taxes. Debtor does list only (\$10) a month for home maintenance, upkeep, and repairs.

On Amended Schedule I, correcting the errors on Original Schedule I, the accurate income information for Debtor as of the October 12, 2023, is that the Debtor has only \$5,011.76 in monthly take-home income. Dckt. 91 at 5. For expenses, Amended Schedule I states that since October 12, 2023, the Debtor's monthly expenses are (\$4,661.33), leaving only \$350.43 a month in projected disposable income to fund a plan. *Id.* at 6-7.

One reason for a decrease in income is that Debtor's Mother is reducing her contribution for housing and living expenses from \$1,900 a month (Dckt. 22 at 29) to only \$822 a month (Dckt. 91 at 5). No declaration is provided by the Motion to state her income, her ability to contribute to the housing expenses, and for food, housekeeping, and other expenses for which she is a dependent of the Debtor.

On Amended Schedule I, Mother lower contribution of \$822 (which was stated to be \$1,900 on original Schedule I) is identified as "Social Security."

With Debtor's Mother only contributing \$822 a month, apparently choosing to reduce the \$1,900 she has available when the Original Schedule I was filed, an issue arises whether she is actually a dependent of the Debtor or whether the Debtor and her Mother are seeking to have Debtor's creditors subsidize Debtor's Mother's living expenses.

These changes in the Schedules require that financial information from the Mother be provided and whether Mother is a dependent of the Debtor and whether Mother is fairly contributing to her living expenses.

Debtor has increased her expenses adding a home mortgage expense of (\$1,557.58) and has seen a need to increase the home maintenance expense to (\$110), from the originally stated (\$10).

Failure to File Tax Returns

Finally, Trustee states Debtor has not filed the federal income tax return for the 2022 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).

Debtor's counsel reported that the tax returns have been filed and that this will be documented for the court and Trustee.

At the hearing, the Parties agreed to a continuance to allow the June 4, 2024 payment to be completed and Debtor to make the Plan payment due by June 25, 2024.

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

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

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

IT IS ORDERED that the Motion to Confirm the Amended Plan is
XXXXXXX.

6. 24-21910-E-13 DPC-1	TAMMY ANDREWS Patricia Wilson	OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 6-14-24 [14]
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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.

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, parties requesting special notice, and Office of the United States Trustee on June 14, 2024. By the court’s calculation, 32 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:

1. Creditor Shellpoint Mortgage (“Creditor”) is misclassified in Class 4, as Debtor admitted at the 341 Meeting that she is delinquent on her mortgage payments. Obj. 2:3-10, Docket 14.
2. The Plan relies on a Motion to Value which has not been filed. The Plan is not feasible without the Motion to Value being granted. *Id.* at 2:11-16.

Trustee submits the Declaration of Trina Hayek to authenticate the facts alleged in the Objection. Decl., Docket 16.

DISCUSSION

Misclassified Claims

Debtor has classified Creditor in Class 4 of her Plan, which Class only deals with claims that “mature after the completion of the plan, are not in default, and are not modified by this plan.” Plan § 3.10, Docket 7. Trustee reports Debtor is delinquent regarding this claim.

At the hearing, **XXXXXXX**

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 Siskiyou Credit Union. Debtor has failed to file a Motion to Value the Secured Claim of Siskiyou Credit Union, however. Without the court valuing the claim, the Plan is not feasible. 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 an order substantially in the following form holding that:

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

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

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

7 thru 8

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.

Debtor's Atty: Peter G. Macaluso

Notes:

Continued from 11/7/23. The hearings in the State Court receivership proceeding being continued to 11/8/23.

The Objection to Claim of Gerard Keena, II, POC 1-1 is xxxxxxx.

July 16, 2024 Hearing

At the previous hearing, counsel for the Receiver, counsel for the Debtor, and counsel for the City of Sacramento requested that the hearing be further continued so that they can digest with their clients (and for sum the state court attorneys for their clients) the State Court Ruling and how it is addressed under Federal Bankruptcy Law.

The hearing was continued to allow the respective counsel to meet and confer with each other and their clients to determine what issues, if any remain for adjudication in this Contested Matter.

On July 9, 2024, Trustee filed a Status Report with the court updating the court on where this matter stands. Docket 399. Trustee states:

1. Debtor or third parties has paid \$30,500 into the Plan to date. Status Report 1:24-26, Docket 399.
2. The claim of Gerard Keena, POC 1-1, has been amended to unsecured on June 24, 2024. *Id.* at 2:2-5.
 - a. The court authorized the filing of this amended POC in its Order issued on April 25, 2024. Docket 391.
 - b. Amended Proof of Claim 4-1, filed on June 24, 2024, asserts an unsecured claim in the amount of (\$336,336.73).
3. Trustee is not sure whether Debtor can afford to make plan payments. One declaration was filed in support of a prior motion, (Docket 198), and has not been updated where it referred to moving in by May 2024. Additional events may also have occurred which may affect this – the Trustee heard in

open Court that Debtor's spouse had died earlier, and a fire may have happened on or near the property. Status Report at 2:6-11, Docket 399.

4. Trustee needs to see a Supplemental Schedule J to show what expenses debtor may still have for contractor Richard Sanders, and that the previously filed Schedule J only allotted \$400 for food and no tax expense. *Id.* at 2:13-18.

At the hearing, **XXXXXXX**

REVIEW OF OBJECTION

Nadia Zhiry, Chapter 13 Debtor, ("Debtor") requests that the court disallow the claim of Gerard F. Keena, II, ("Receiver"), Proof of Claim No. 1-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of \$183,585.18. Debtor asserts, without stating the legal basis supporting such argument, that:

1. **Receiver has no claim:**

- a. Receiver has no claim against Debtor "having been discharged in the 'Chapter 7', as the 'Receiver'" The Receiver has not been reappointed. Objection, Dckt. 193 at 3:4-7.

The court notes, Debtor has not provided any legal grounds that Receiver was discharged upon Debtor receiving their Chapter 7 discharge. Upon review of 11 U.S.C. § 727, a Chapter 7 discharge does not discharge the duties of an appointed custodian, but rather discharges debts and liabilities that arose before the date requesting relief. Debtor does not point to any authority in the Bankruptcy Code or the Superior Court's Receivership Order (*see* Order Appointing a Receiver Pursuant to Stipulated Judgment, Cal. Super. Ct. Sacramento Cnty. No. 34-2017-00208154, May 3, 2021 (filed in this case as Dckt. 195) (hereinafter the "Receivership Order")) that requires "reappointment" of the Receiver. The discharge did not abate the Receiver and Debtor provides no grounds that Receiver would need to be reappointed after receiving Chapter 7 relief.

2. **Receiver has no standing:**

- a. Receiver has no "standing" to assert any claim in this Chapter 13 case. Objection, Dckt. 193 at 3:14-15.

Upon review of the Proof of Claim, Receiver states they are owed money for the services provided. Receiver is not asserting a claim for a third party. Receiver, thus, has standing. Debtor conceded this at the hearing on the Status Conference on the Motion to Excuse Turnover and/or Motion to Confirm Termination or Absence of Stay.

3. **Receiver is owed no funds:**

- a. Receiver's Proof of Claim reflects no costs, no fees, and no charges between the filing of the previous Chapter 7 case and the filing of the current Chapter 13 case. Objection, Dckt. 193 at 2:8-12.

The Chapter 7 case was filed on July 29, 2021. E.D. Cal. No. 21-22759. The current case was filed on May 25, 2022. E.D. Cal. No. 22-21314.

Upon review of Receiver's Proof of Claim (E.D. Cal. No. 22-21314, Proof of Claim 1-1), Receiver does not provide a breakdown of the fees incurred before and after the Chapter 7 case. However, Receiver's Proof of Claim in the Chapter 7 case (E.D. Cal. No. 21-22759, Proof of Claim 1-1) was for \$82,217.54. Receiver's Proof of Claim in the current case is for \$183,585.18. Receiver clarifies their pre-Chapter 7 filing fees and post-Chapter 7 filing fees in their Response, which is summarized under "Receiver's Response."

- b. Having been discharged, and no claim transferring into the pending Chapter 13 case, Receiver is owed no funds.

The court notes, the claim is asserted to be fully secured. It is well known that liens survive a debtor's discharge, so the fact that Debtor received a discharge is not relevant to the claims survival. The debt still exists, and to the extent it is secured it is still enforceable.

RECEIVER'S RESPONSE

Receiver filed a response on May 30, 2023. Dckt. 234. Receiver indicates they amended their Proof of Claim to clarify distinctions between the *in personam* and *in rem* claim. The court notes, once a party has objected to a proof of claim, the creditor asserting the claim may not withdraw the claim except on order of the court. FED. R. BANKR. P. 3006. The court acknowledges that Receiver attempts to address Debtor's contentions that Receiver would be violating the discharge injunction.

The amended Proof of Claim, Proof of Claim 1-2, indicates the following:

Claim amount.....Unknown

It is not clear to the court why the amended claim amount is unknown, when Receiver later asserts the claim is fully secured in the amount of \$185,585.18.

Amount of claim that is secured.....\$185,585.18

Amount owed from expenses incurred
pre-Chapter 7 filing (July 29, 2021).....\$84,461.04

Amount owed from expenses incurred
post-Chapter 7 filing to date of
Chapter 13 filing (July 29, 2021 - May 25, 2022).....\$99,124.14

Receiver first addresses the *in personam* claim and states that Debtor's Objection to Receiver's Proof of Claim has been rendered moot because the \$99,124.14 *in personam* claim in the Amended Receiver Proof of Claim does not reflect any personal liability of Debtor that was previously discharged in Debtor's Chapter 7 case. *Id.* at 7; *see also* Attachment A to Amended Proof of Claim of Gerard F. Keena II, filed May 26, 2023.

Receiver also states that it still has a secured claim that was not previously discharged and that remains as an encumbrance against the Claire Avenue Properties. Dckt. 234, at 7. Finally, Receiver states that it appears that Debtor is arguing that the Chapter 7 case abated the Receivership Order. Dckt. 234, at 7. Receiver asserts that this argument is incorrect and lacks citation to any legal authority in support. *Id.* Receiver points to 11 U.S.C. § 543(d) and argues that the order appointing Receiver has not been abated and it was not necessary to reappoint the Receiver as Debtor suggests. *Id.* at 8.

DEBTOR'S REPLY

Debtor filed a reply on June 3, 2023. Dckt. 240. Debtor's reply concedes that the Amended Proof of Claim "technically moot[s]" Debtor's Objection, but asserts that:

- (1) Receiver did not follow the state court order;
- (2) Receiver has not had any fees approved;
- and (3) Receiver has not recorded its lien as required by the state court, rendering any claim as unsecured rather than secured.

Dckt. 240, at 1-2.

Debtor identifies a number of disputed material facts, *id.* at 7-8, and requests that this court either sustain its objection or, in the alternative, allow for an evidentiary hearing to determine the value of the claim, if any, *id.* at 9-10.

DISCUSSION

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

It appears what remains unresolved is the amount of fees and expenses that are to be recoverable by Receiver. Debtor argues that Receiver has no fees allowed by the state court under the Receivership Order.

California Rule of Court 3.1179 states that the Receiver is "the agent of the court," to act in the benefit of all people. The Receiver is an agent of the Superior Court of California. The court has not been provided with any legal authority indicating that a federal bankruptcy judge takes over the state court's jurisdiction to determine the rights of the Receiver.

California Health and Safety Code gives explicit authority to a receiver to record a lien for fees and expenses, allowing a receiver:

To borrow funds to pay for repairs necessary to correct the conditions cited in the notice of violation and to borrow funds to pay for any relocation benefits authorized by paragraph (6) and, **with court approval, secure that debt** and any moneys owed to the receiver for services performed pursuant to this section with a lien on the real property upon which the substandard building is located. The **lien shall be recorded in the county recorder's office** in the county within which the building is located.

Cal. Health & Safety Code § 17980.7 (emphasis added).

Pursuant to the court order that was provided to the court, and recorded on May 13, 2021, “[t]he Receiver may record a lien (‘Receiver’s Lien’) against the Subject Properties to secure the repayment of the Receiver’s compensation, costs, and expenses, in accord with California Health and Safety Code section 17980.7(c)(4)(G). The Receiver’s Lien will be a lien on the Subject Properties prior and superior to all pre-existing private liens and encumbrances.” Proof of Claim 1-2, Recorded Order Appointing a Receiver Pursuant to Stipulated Judgment, Attachment 1 at ¶ 7.

Continuance of Hearing

As the court addressed at the hearing, in light of the Receiver seeking to pursue the allowance of fees and expenses in the State Court Action, the court continues the hearing on this Objection for purposes of conducting a status conference thereon to determine what, if any amended pleadings are required and if any dispute remains to be resolved.

NOVEMBER 7, 2023 STATUS CONFERENCE

On October 31, 2023, the State Court Receiver notified the court that the hearings in the State Court receivership have been continued to November 8, 2023. The court has been continuing the hearings in this Motion, Motion to Excuse Turnover, Objection to Proof of Claim, and Motion to Confirm the Second Amended Plan until sufficiently after the State Court scheduled proceeding.

NOVEMBER 21, 2023 HEARING

On November 14, 2023, Gerard F. Keena III, the State Court Receiver, filed an updated Status Report. Dckt. 338. He reports that the State Court Judge has further continued the hearing on the motions in the State Court Receivership Action which the Parties have identified as needing to be resolved before this Objection may be determined. The State Court hearings have now been continued to January 17, 2024. The State Court Receiver requests that this matter be continued to a date after January 17, 2024.

The court continues this matter to 2:00 p.m. on January 30, 2024. Due to the court’s calendar for February, the first available date after January 30, 2024, would not be until mid-February, 2024.

January 30, 2024 Hearing

On January 18, 2024, the State Court Receiver, Gerard F. Keena, notified the court that the hearings in the State Court receivership have been continued to February 22, 2024, by the State Court’s own

motion. Docket 350. The court has been continuing the hearings in this Motion, Motion to Excuse Turnover, Objection to Proof of Claim, and Motion to Confirm the Second Amended Plan until sufficiently after the State Court scheduled proceeding. The State Court Receiver requests that this matter be continued to a date after February 22, 2024.

The court continues this matter to 2:00 p.m. on March 12, 2024.

March 12, 2024 Hearing

On March 7, 2024, Gerard F. Keena II filed a Status Report (Dckt. 367) advising the court and parties in interest concerning the four pending Contested Matters Status Conferences identified as:

1. Motion To Excuse Turnover and Confirmation of Exemption from The Automatic Stay (DCN: KSR-1);
2. Debtor's Objection to Proof of Claim #1-1 Gerard F. Keena II Receiver (DCN:PGM-3);
3. Debtor's Motion to Confirm Second Amended Plan Filed on July 12, 2023 (DCN:PGM-5); and
4. Trustee's Motion to Dismiss Case (DCN: DPC-5).

The Receiver Reports as follows:

On February 26, 2024, the Superior Court issued a Tentative Ruling, in advance of the scheduled hearing, granting the Receiver's Motion. The Tentative Ruling notified the parties of the procedure to request oral argument and oral argument was requested.

On February 27, 2024, the hearing was held, and the parties presented their oral arguments. At the conclusion of the hearing, the Receiver's Motion was taken under submission by the Superior Court.

As of the date and time this document is signed, no ruling has yet been issued by the Superior Court. It is, therefore, respectfully requested that the Status Conferences currently scheduled for March 12, 2024, at 2:00 P.M. be further continued to a future date, to allow the Superior Court time to issue its final ruling in connection with the Receiver's Motion.

Dckts. 365, 367, 369, 371.

At the Status Conference, the Parties agreed to a further continuance.

April 23, 2024 Hearing

The court continued this motion multiple times to allow the hearings in the State Court receivership action to conclude. On April 16, 2024, the Debtor filed an undated Status Report regarding this Objection to Claim. Dckt. 382.

The Debtor reports that the Superior Court has issued its Ruling on the fees and costs to be allowed Gerard Keena II as the Receiver in the State Court Action. A copy of the Ruling and Order is provided as Exhibit 1 by Debtor. Dckt. 383.

As discussed in this Ruling, given that the Debtor discharged in a prior Chapter 7 Case personal liability for much of the fees and costs owed the Receiver incurred prior to this case, much of the Objection has focused on what portion, if any, of the Receiver's Claim is secured.

Debtor's conclusion from the Ruling is that no lien against any property of the Debtor, which is now property of the Bankruptcy Estate was granted by the Superior Court prior to the State Court's April 5, 2024 Ruling that is provided as Exhibit 1. The Submitted Matter Ruling portions, pages 8-10 of the State Court Ruling concludes with:

Thus, as stated in the original tentative, the Court must conclude that no lien was previously filed by the Receiver in this action for unpaid fees and costs, although the Court does grant such a lien by this motion.

Exhibit 1; State Court Ruling, p. 10; Exhibit 1; Dckt. 383.

With respect to the State Court proceedings, the court *Modified* the automatic stay pursuant to the Stipulation of Debtor and the Receiver to allow the State Court Judge to determine the amount of allowed receivership fees and costs for the Receiver. The court's Order (which was drafted by the Parties and lodged with the court) provides:

1. That to the extent, if any, that the automatic stay under 11 U.S.C. §362 applies to the case pending before the Superior Court of the State of California, in and for the County of Sacramento (the "Superior Court") as Case Number 34-2017-0028154, styled as City of Sacramento v. Nadia Zhiry (the "Superior Court Action"), such automatic stay is hereby modified to allow Gerard F. Keena II, in his capacity as the receiver (the "Receiver") to proceed in the Superior Court Action to seek, defend, and obtain order(s) from the Superior Court in the Superior Court Action concerning the following:

- i. Authorization of the Receiver's employment of counsel to represent him in the Superior Court Action;
- ii. Determination of whether the Receiver's duties are complete as set forth by the Superior Court pursuant to its Order Appointing a Receiver Pursuant to Stipulated Judgment (the "Appointment Order") entered in the Superior Court Action on May 3, 2021;
- iii. Upon the Superior Court's determination that the Receiver's duties under the Appointment Order are complete, whenever such determination is made, seeking authorization and approval the Receiver's final report and accounting and the Receiver's discharge over the real properties at issue in the Superior Court Action;

iv. **Authorization and approval of the Receiver's fees and costs** and that of all his counsel, including responding to: that certain Opposition to Receiver's Monthly Report and Accounting and Notice of Intent to Pay Receiver's Fees and Expenses-April 2023, and to Relieve and Remove (sic) The Receiver, filed by the Debtor herein, Nadia Zhiry, in the Superior Court Action on June 13, 2023; the Motion to Discharge Receiver filed by Debtor herein, Nadia Zhiry, in the Superior Court Action on June 22, 2023; and any issues raised therein; and

v. **Determination of the extent, validity, and priority of the Receiver's lien over the real properties at issue in the Superior Court Action.**

Order; Dckt. 280 (emphasis added).

Reviewing the Ruling and Order of the Superior Court (Exhibit 1; Dckt. 383), the State Court Judge expressly states that as of the filing of this Bankruptcy Case, “the Court must conclude that no lien was previously filed by the Receiver in this action for unpaid fees and costs. . . .” In the Ruling, the State Court Judge states that “although the Court does grant such a lien by this motion.” *Id.*

From the Order modifying the automatic stay, on its face it does not include the automatic stay to encumber property of the Bankruptcy Estate post-petition.

At the hearing, counsel for the Receiver, counsel for the Debtor, and counsel for the City of Sacramento requested that the hearing be further continued so that they can digest with their clients (and for sum the state court attorneys for their clients) the State Court Ruling and how it is addressed under Federal Bankruptcy Law.

The hearing is continued to 2:00 p.m. on July 23, 2024, to allow the respective counsel to meet and confer with each other and their clients to determine what issues, if any remain for adjudication in this Contested Matter.

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

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

The Objection to Claim of Gerard F. Keena, II, (“Receiver”), filed in this case by Nadia Zhiry, Chapter 13 Debtor, (“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 Objection to Claim of Gerard Keena, II, POC 1-1 is **XXXXXXX**.

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

Debtor's Atty: Peter G. Macaluso

Notes:

Continued from 11/7/23. The hearings in the State Court receivership proceeding being continued to 11/8/23.

The Motion to Confirm the Amended Plan is xxxxxxx.
--

July 16, 2024 Hearing

This hearing was continued to be heard in conjunction with the Objection to Claim. On July 9, 2024, Trustee filed a Status Report with the court updating the court on where this matter stands. Docket 399. Trustee states:

1. Debtor or third parties has paid \$30,500 into the Plan to date. Status Report 1:24-26, Docket 399.
2. The claim of Gerard Keena, POC 1-1, has been amended to unsecured on June 24, 2024. *Id.* at 2:2-5.
 - a. The court authorized the filing of this amended POC in its Order issued on April 25, 2024. Docket 391.
3. Trustee is not sure whether Debtor can afford to make plan payments. One declaration was filed in support of a prior motion, (Docket 198), and has not been updated where it referred to moving in by May 2024. Additional events may also have occurred which may affect this – the Trustee heard in open Court that Debtor's spouse had died earlier, and a fire may have happened on or near the property. Status Report at 2:6-11, Docket 399.
4. Trustee needs to see a Supplemental Schedule J to show what expenses debtor may still have for contractor Richard Sanders, and that the previously filed Schedule J only allotted \$400 for food and no tax expense. *Id.* at 2:13-18.

At the hearing, **XXXXXXX**

REVIEW OF MOTION

The debtor, Nadia Zhiry (“Debtor”), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly Plan payments of \$500 per month for the first 13 months, followed by \$2,000 per month for the remainder of the Plan. Amended Plan, Dckt. 289. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Over the 60 months of the Plan, this would total \$100,500 in plan payments by Debtor.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on August 1, 2023. Dckt. 300. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor is delinquent in Plan payments.
- B. The Plan may extend sixty (60) months, depending on when the Civil Action concludes.
- C. Debtor relies on payments from daughter, however, Daughter has not provided a declaration indicating they will be able to make Plan payments for sixty (60) months.
- D. Debtor’s expenses appear low.
- E. The Plan appears underfunded if the receiver’s claim remains allowed in the full amount.

RECEIVER’S JOINDER

The Receiver, Gerard F. Keena II (“Receiver”), filed a “Joinder” to Trustee’s opposition on August 8, 2023. Dckt. 303. The court treats the “Joinder” as the Receiver’s Opposition. The Receiver shares Trustee’s concerns in that:

- 1. No information is provided to determine how long the Debtor’s daughter intends to relocate at the property.
- 2. The rent is taxable income and there has been no discussion as to the anticipated amount of taxes paid on the rent.
- 3. There is no evidence as to the daughter’s intention and ability to make the payments on a consistent basis.

DEBTOR’S RESPONSE

Debtor filed a response, Dckt. 305, on August 8, 2023, indicating:

1. Debtor intends to be current by the hearing date.
2. Debtor believes the Receiver fees will be determined on August 31, 2023, thus concluding the civil action and not making the case overextended.
3. Debtor submitted the declaration of Debtor's daughter as evidence to support the daughter's commitment to helping fund the Plan.

From the court's review of the docket, Debtor's daughter, Vera, submitted a declaration on April 24, 2023, in support of Debtor's First Amended Plan, indicating that they are willing and able to contribute \$1,500 per month. Dckt. 198. Vera does not indicate how long they intend to live at the property.

Debtor's daughter has not submitted a declaration in support of the current Motion indicating their ability to help fund the Second Amended Plan.

4. Debtor has filed current amended schedules and assert that their expenses are lower than the average family of two.

The court notes, Debtor has only filed Amended Schedules I, no Amended Schedule J. Dckt. 292.

5. Debtor asserts that the Receiver's fees will be significantly less than the Proof of Claim.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is \$1,500 delinquent in Plan payments. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Failure to Complete Plan Within Allotted Time

Trustee indicates Debtor may not be able to complete the Plan in sixty months, as the Civil Action is still pending and Debtor does not intend to pay the Receiver until after the conclusion of the "Civil Action." Debtor indicates the Civil Action will be concluded at the end of the month.

Failure to Afford Plan Payment / Cannot Comply with the Plan

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

Debtor's daughter has not submitted a declaration in support of the current Motion and ability to fund the Second Amended Plan. Debtor's daughter only submitted a declaration for the First Amended Plan, which was denied confirmation.

Debtor has only filed an Amended Schedule I, and not an Amended Schedule J. Dckt. 292. Therefore, the court does not have an accurate picture of Debtor's expenses and financial reality.

Debtor leaves the court to consider her family expenses (for two adults, Debtor and her husband) as set forth in Supplemental Schedule J filed on April 10, 2023. Dckt. 192. The expenses which Debtor states under penalty of perjury are reasonable and necessary for her family unit of two adults consist of:

Mortgage	\$0.00	In the proposed Chapter 13 Plan Debtor's Daughter is to make monthly payments totaling \$1,750.00 to JPMorgan Chase Bank as Class 4 direct payments under the Plan.
Property Insurance	\$0.00	Testimony that it is included in the monthly mortgage payments. Dec., ¶ 8; Dckt. 287.
Real Estate Taxes	\$0.00	Testimony that it is included in the monthly mortgage payments. Dec., ¶ 8; Dckt. 287.
Home Maintenance and Repairs	\$0.00	
Electricity, Heat, Natural Gas	\$200.00	This is for two residential properties on the Debtor's real property
Water, Sewer, Garbage	\$140.00	
Telephone, Internet, Cell Phone	\$50.00	
Food and Housekeeping Supplies	\$400.00	Assuming \$50 a month for housekeeping supplies, that leaves \$350 a month for food for the two adults. In a thirty day month, that allows for \$1.94 per meal per person for food (assuming three meals a day per person).
Clothing and Dry Cleaning	\$10.00	This allows each adult \$5 a month for clothing over the 60 months of the Plan. This is only \$60 per adult per year for clothing for five years.
Personal Care and Products	\$20.00	This allows each adult \$10 a month for personal care (such as haircuts and hair dressers) and products (such as lotions, creams, and the like).
Medical and Dental Expenses	\$25.00	This allows each adult \$12.50 a month for medical and dental co-pays, band-aids, creams, mouthwash, toothpaste and the like.

Transportation (gas, maintenance, and repairs)	\$100.00	On Amended Schedule C, Debtor claims an exemption in a 2007 Kia Rondo with 165,000 miles on it. Dckt. 227. Debtor lists this as the only vehicle Debtor has an interest in on Amended Schedule A/B, stating it has a value of \$2,500.00. Dckt. 207. If one allows only \$35.00 a month for repairs for the next five years (which is only \$420 a year), there is \$65 for gas a month. Paying \$5.00 a gallon for gas, Debtor and her non-debtor Spouse can purchase only 13 gallons of gas a month. Assuming the 2007 vehicle gets 20 miles to the gallon, that would allow Debtor to drive only 65 miles a week, which is only 9 miles a day.
Entertainment	\$10.00	This allows the Debtor and her non-debtor Spouse only \$5 a month for entertainment. Thus, for the five years of the Plan, Debtor and her non-debtor Spouse will have next to no entertainment in their lives.
Vehicle Insurance	\$50.00	For the 2007 vehicle that Debtor and her non-debtor Spouse can only drive for 9 miles a day, Debtor will pay \$600 a year in insurance.

Debtor's statement under penalty of perjury that Debtor and her non-debtor Spouse only have \$1,005 a month in necessary and reasonable expenses for the five years of the bankruptcy plan.

On the latest Supplemental I filed, Dckt. 292, Debtor states having the following Income:

Debtor's Social Security Income.....\$505.00
Non-Debtor Spouse's SSI.....\$1,000.00

Dckt. 292. Debtor also lists an additional \$1,500.00 in monthly rent paid by her daughter Vera and Debtor includes that in computing her monthly income. However, the Second Amended Plan requires an unidentified daughter of Debtor to make monthly payments of \$1,500.00 and \$250.00 to Class 4 Creditor JPMorgan Chase Bank, N.A. Second Amd Plan, ¶ 3.10; Dckt. 289. In her Declaration in support of the Motion to Confirm the Second Amended Plan, Debtor testifies that it is her daughter Luyba who is making the monthly mortgage payments, which include insurance and taxes. Dec., ¶ 8; Dckt. 287.

There appear to be some significantly understated expenses by Debtor. These include gas, maintenance, and repairs for Debtor 16 year old vehicle, maintenance and repair of Debtor's two residences, cell, internet, and video service for two adults, food, personal care, medical expenses, and entertainment. Rather than stating actual reasonable and necessary expenses, it appears that Supplemental Schedule J is a MAI (made as instructed) Schedule J to show a preconceived monthly net income.

The Receiver's Proof of Claim indicates a secured claim in the amount of \$183,585.18. Debtor insists the Civil Action will determine that the claim is for significantly less, and is hopefully that the Receiver's fees and costs will be only \$3,625.10. This is significantly less than Receiver's claim.

Looking at Amended Proof of Claim 1-2, the Receiver has filed it as a secured claim, with the lien being asserted on the Real Property in this case. Exhibit 1 to Amended Proof of Claim 1-2 is a copy of the order appointing the receiver that was recorded with the Sacramento County Recorder, which states a recording date of May 13, 2021. With respect to compensation, expenses, and a lien securing the amounts owing to the Receiver, the State Court Order Appointing Receiver includes:

3. The Receiver will be compensated for his services in the amount of \$250 per hour. The Receiver may use the Receiver's attorneys, paralegals, and other staff to assist him as necessary. Receiver's personnel will be compensated in the amounts outlined in the billing rate schedule attached hereto as Exhibit A. The Receiver will be reimbursed for the Receiver's reasonable costs and expenses incurred in connection with receivership activities, including expenses for those labor and service described in this Order, travel, copying, long distance telephone calls, and legal process. . . .

7. The Receiver may record a lien ("Receiver's Lien") against the Subject Properties to secure the repayment of the Receiver's Compensation, costs, and expenses in accord with California Health and Safety Code section 17980.7(c)(4)(G). The Receiver's Lien will be a lien on the Subject Properties prior and superior to all pre-existing private liens and encumbrances.

In the General Statement of Claim that is attached to Amended Proof of Claim 1-2, the Receiver states that there were \$84,461.04 in fees and expenses incurred from his May 3, 2021 appointment (Date on the State Court Order of Appointment) through July 29, 2021, and additional fees and expenses in the amount of \$88,124.14 incurred for the period July 30, 2021 through May 25, 2022 (the Chapter 13 filing date). Amended Proof of Claim No. 1-2 does not include amounts for fees and expenses incurred during this Chapter 13 Case.

The Order appointing the Receiver allows him to bill his time at \$250 an hour. There are similar hourly rates allowed for in-house counsel of the Receiver. There is not an hourly rate stated for any "out-house counsel" employed by the Receiver. If during the fourteen months of this Chapter 13 Case the Receiver and his counsel billed only ten hours a month, then each would be seeking compensation for 140 hours each, with an hourly rate of at least \$250.00 (this court does not know what hourly rate the State Court will allow for the "out-house counsel"). One hundred and forty hours times \$250 an hour equals \$19,600.00, each for the Receiver and the "out-house counsel," which then totals \$39,200.00 in fees since the commencement of this Chapter 13 case.

It is not readily apparent how Debtor computes Receiver to have a claim of only \$3,625.10 at the outset. It is also unclear how the Receiver has incurred fees and expenses totaling \$183,585.18, plus additional fees and expenses during this case, in light of the status of the property at issue when this case was filed.

Debtor has not provided a provision in the Plan as to what will occur if Receiver's claim is determined to be for the full amount of \$183,585.18, plus post-Chapter 13 filing fees and costs, or any lesser reasonable amount allowed by the State Court judge in the Receivership Action. Without the court knowing the extent of Receiver's claim, the Plan does not appear confirmable.

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

In light of the prosecution of the discharge of the Receiver and determination of his fees and expenses, which hearing is set for October 31, 2023, the Parties agreed to the continuance of the hearing on this Motion.

NOVEMBER 7, 2023 STATUS CONFERENCE

On October 31, 2023, the State Court Receiver notified the court that the hearings in the State Court receivership have been continued to November 8, 2023. The court has been continuing the hearings in this Motion, Motion to Excuse Turnover, Objection to Proof of Claim, and Motion to Confirm the Second Amended Plan until sufficiently after the State Court scheduled proceeding.

NOVEMBER 21, 2023 HEARING

On November 14, 2023, Gerard F. Keena III, the State Court Receiver, filed an updated Status Report. Dckt. 338. He reports that the State Court Judge has further continued the hearing on the motions in the State Court Receivership Action which the Parties have identified as needing to be resolved before this Motion may be determined. The State Court hearings have now been continued to January 17, 2024. The State Court Receiver requests that this matter be continued to a date after January 17, 2024.

The court continues this matter to 2:00 p.m. on January 30, 2024. Due to the court's calendar for February, the first available date after January 30, 2024, would not be until mid-February, 2024.

January 30, 2024 Hearing

On January 18, 2024, the State Court Receiver, Gerard F. Keena, notified the court that the hearings in the State Court receivership have been continued to February 22, 2024, by the State Court's own motion. Docket 351. The court has been continuing the hearings in this Motion, Motion to Excuse Turnover, Objection to Proof of Claim, and Motion to Confirm the Second Amended Plan until sufficiently after the State Court scheduled proceeding. The State Court Receiver requests that this matter be continued to a date after February 22, 2024.

The court continues this matter to 2:00 p.m. on March 12, 2024.

March 12, 2024 Hearing

On March 7, 2024, Gerard F. Keena II filed a Status Report (Dckt. 367) advising the court and parties in interest concerning the four pending Contested Matters Status Conferences identified as:

1. Motion To Excuse Turnover and Confirmation of Exemption from The Automatic Stay (DCN: KSR-1);
2. Debtor's Objection to Proof of Claim #1-1 Gerard F. Keena II Receiver (DCN: PGM-3);

3. Debtor's Motion to Confirm Second Amended Plan Filed on July 12, 2023 (DCN: PGM-5); and
4. Trustee's Motion to Dismiss Case (DCN: DPC-5).

The Receiver Reports as follows:

On February 26, 2024, the Superior Court issued a Tentative Ruling, in advance of the scheduled hearing, granting the Receiver's Motion. The Tentative Ruling notified the parties of the procedure to request oral argument and oral argument was requested.

On February 27, 2024, the hearing was held, and the parties presented their oral arguments. At the conclusion of the hearing, the Receiver's Motion was taken under submission by the Superior Court.

As of the date and time this document is signed, no ruling has yet been issued by the Superior Court. It is, therefore, respectfully requested that the Status Conferences currently scheduled for March 12, 2024, at 2:00 P.M. be further continued to a future date, to allow the Superior Court time to issue its final ruling in connection with the Receiver's Motion.

Dckts. 365, 367, 369, 371.

At the Status Conference, the Parties agreed to a further continuance.

April 23, 2024 Hearing

The court continued this motion multiple times to allow the hearings in the State Court receivership action to conclude. The Debtor filed a Status Reports that states the Superior Court has issued its Ruling on the fees and costs to be allowed Gerard Keena II as the Receiver in the State Court Action. A copy of the Ruling and Order is provided as Exhibit 1 by Debtor. Dckt. 383.

At the hearing all of the Parties concurred with continuing the hearing in light of the only remaining issue being the determination of the Receiver's Claim.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Nadia Zhiry ("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
XXXXXXX.

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

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's Attorney, Chapter 13 Trustee, attorneys of record who have appeared in the case, creditors and parties in interest, and Office of the United States Trustee on June 18, 2024. By the court's calculation, 28 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice).

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

The Motion for Approval of Settlement Agreement is ~~granted~~.

Mark Mustybrook and Dionna Mustybrook, creditors in this case, ("Movant," "Mustybrooks") request that the court approve a compromise and settle competing claims and defenses with debtor Jim Hickerson ("Settlor," "Mr. Hickerson"). The claims and disputes to be resolved by the proposed settlement involve a related adversary proceeding no. 22-02109. The facts alleged in the Motion giving rise to the settlement are as follows:

1. On or about July 2, 2020, the Mustybrooks and Mr. Hickerson entered into a California Home Improvement Contract ("Contract") to raise the Mustybrooks' home in Midtown Sacramento, replace the original brick foundation, and build an additional dwelling unit on the ground floor. The total amount of the Contract was \$400,000.00. Mot. 5:5-8, Docket 45.

2. Mr. Hickerson requested and accepted payment over time in the total amount of \$360,000.00 from the Mustybrooks in relation to the Contract. *Id.* at 5:9-10.
3. On or about July 19, 2022, Mr. Hickerson without any prior notice stopped all work on the Mustybrooks' project without having performed a significant amount of the work for which he received payment. *Id.* at 5:11-13.
4. On or about August 5, 2022, counsel for the Mustybrooks filed an action against Mr. Hickerson in the Sacramento County Superior Court in relation to the above for fraud, conversion, breach of contract, and negligence. *Id.* at 5:14-16.
5. On or about September 15, 2022, Mr. Hickerson filed the Bankruptcy. Doing so stayed the Mustybrooks' Superior Court case. *Id.* at 5:17-18.
6. On September 19, 2022, the California Contractors State License Board ("CSLB") opened an investigation at the Mustybrooks' request in response to their claims against Mr. Hickerson. *Id.* at 5:19-21.
7. On or about November 18, 2022, counsel for Mark Mustybrook filed a Proof of Claim in the Bankruptcy. *Id.* at 5:22-23.
8. On or about December 9, 2022, counsel for the Mustybrooks filed their Adversary Proceeding Complaint for Non-Dischargeability against Mr. Hickerson seeking nondischargeability for the debt Mr. Hickerson owed to the Mustybrooks and damages pursuant to 11 U.S.C. §523(a)(false pretenses, false representation, actual fraud); 11 U.S.C. §523(a)(4)(fraud as fiduciary, embezzlement, larceny); 11 U.S.C. §523(a)(6), willful and malicious injury). *Id.* at 6:1-6.
9. As part of the CSLB's investigation referenced in Paragraph 6 above, the CSLB retained an independent industry expert to inspect the Mustybrooks' property to determine whether Mr. Hickerson had in fact not performed the work for which he had taken payment. On June 1, 2023, the CSLB provided the Mustybrooks with a copy of the expert's report. The expert's conclusion stated that Mr. Hickerson had taken \$318,000.00 from the Mustybrooks for work he had not performed. *Id.* at 6:7-12.
10. Counsel for the Mustybrooks propounded written discovery on Mr. Hickerson in the Adversary Proceeding. Mr. Hickerson confirmed in his responses that he had taken payment from the Mustybrooks on numerous occasions for work he had not yet performed. Mr. Hickerson also confirmed that on or about July 19, 2022, all work at the Mustybrooks' home was halted and to date, he had not performed any additional work there. *Id.* at 6:13-17.

11. On December 22, 2023, the CSLB, via the California Office of the Attorney General, filed an Accusation against Mr. Hickerson before the California Registrar of Contractors with findings that among other violations, Mr. Hickerson had abandoned the Mustybrooks' project and accepted payment on a number of occasions for work he had not yet performed, in violation of CA Business and Professions Code §§7107, 7159.5 respectively. *Id.* at 6:18-22.
12. On May 16, 2024, the parties executed the Agreement wherein Mr. Hickerson will pay the Mustybrooks the total sum of \$300,000.00 in exchange for a fully executed Request for Dismissal With Prejudice of the Adversary Proceeding. *Id.* at 7:1-3.
13. Mr. Hickerson's attorney was originally drafting the settlement agreement, but he passed away suddenly on June 9, 2024, so counsel for Movant is now filing this Motion. *Id.* at 2:18-3:2.

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 48):

1. Within 30 days after the Court's approval of this Motion, Mr. Hickerson will pay the Mustybrooks one payment in the amount of \$50,000.00. Mr. Hickerson will obtain that amount from a withdrawal of funds from his Turner Construction, Inc. Retirement Investment Plan and from Mr. Hickerson's wife's Individual Retirement Account. Mot. 3:12-15, Docket 45.
2. Mr. Hickerson will make monthly payments to the Mustybrooks in the amount of \$3,000.00 to commence on the first day of the first month after the Court's approval of this Motion. Mr. Hickerson will continue to make monthly payments to the Mustybrooks in the amount of \$3,000.00 on the first day of every month thereafter until the Settlement Amount is paid in full. *Id.* at 3:16-20.
3. Within 7 days after the Court's approval of this Motion, Mr. Hickerson will provide the Mustybrooks with a fully executed Promissory Note acknowledging a debt to them in the amount of \$300,000.00. Also within 7 days after the Court's approval of this Motion, Mr. Hickerson will provide the Mustybrooks a Deed of Trust securing the debt in the Promissory Note and granting the Mustybrooks a security interest in Mr. Hickerson's residence which is presently owned by Mr. Hickerson and Mrs. Hickerson as co-trustees of the Hickerson Family Living Trust. *Id.* at 3:21-4:4.
4. Within 7 days after the Court's approval of this Motion, Mr. Hickerson will list his residence for sale with a reputable real estate agent and will continue to list it until it is sold. When Mr. Hickerson's residence is sold, the

Mustybrooks will submit a payoff demand to the applicable title company for the \$300,000.00 Promissory Note and a release of the Deed of Trust, less credit for payments as described in paragraphs 1 and 2 above, and any Chapter 13 distributions previously paid to the Mustybrooks. *Id.* at 4:5-10.

5. Within 7 days after the Court's approval of this motion, Mr. Hickerson will provide the Mustybrooks with an executed Stipulated Judgment for Non-Dischargeability of Debt and an award of damages in the amount of \$300,000.00 which the Mustybrooks will not file unless Mr. Hickerson fails to pay the Settlement Amount in the manner set forth in the Agreement. *Id.* at 4:11-14.

DISCUSSION

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

1. The probability of success in the litigation;
2. Any difficulties expected in collection;
3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and
4. The paramount interest of the creditors and a proper deference to their reasonable views.

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

Movant argues that the four factors have been met.

Probability of Success

Movant argues the probability of success in the litigation leans toward the Mustybrooks. The substance of the Mustybrooks' complaint in the Adversary Proceeding is that Mr. Hickerson wrongfully took payment for work he had not yet performed. Mr. Hickerson's responses to written discovery in the litigation confirms that he accepted payment from the Mustybrooks for work he had not performed. Additionally, the report prepared by the CSLB's independent industry expert concluded that Mr. Hickerson accepted payment totaling \$318,000.00 from the Mustybrooks for work he had not performed. Mot. 7:20-8:6, Docket 45.

Difficulties in Collection

There does not appear to be any difficulties to be encountered in the matter of collection as the agreement clearly defines where payment will derive. The terms of the agreement require Mr. Hickerson to

provide documentation and statements from the sources of payment which should eliminate any questions related to the issue of collection. *Id.* at 8:7-10.

Expense, Inconvenience, and Delay of Continued Litigation

The litigation in this matter is not complex. However, all parties involved will continue to spend significant amounts in attorneys' fees and costs if this case continues to trial. *Id.* at 8:11-15.

Paramount Interest of Creditors

Settlement of this matter as set forth in the Agreement is in the best interest of the creditors and Mr. Hickerson. The Mustybrooks' claim makes up approximately 80% of the total amount of claims in the Bankruptcy. Settlement of this Adversary Proceeding is a benefit to the remaining creditors in that without the Mustybrooks as the largest creditors in the Bankruptcy they may now receive a larger monthly Chapter 13 distribution from the Trustee. Additionally, if Mr. Hickerson dismisses the Bankruptcy, the remaining creditors will be in a position to recover the remainder of their debt over time instead of only their distribution from the Trustee. *Id.* at 8:16-9:5.

Consideration of Additional Offers

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

Chapter 13 Plan and Funding

Under the terms of Debtor's Confirmed Chapter 13 Plan (Dckt. 23) the Debtor is funding it with payments of \$800.00 a month for the first twelve months of the Plan and then \$1,263.00 a month for the remaining forty-eight months of the Plan. Order Confirming, ¶ 4; Dckt. 44. The Plan does not provide for the liquidation of assets and the payments to the Mustybrooks. As noted above, the Mustybrook's claim makes up approximately 80% of the claims in this Bankruptcy Case.

For claims filed, the court notes that there are four other creditors filing general unsecured claims, which total approximately (\$65,550). The one secured claim filed, for which the collateral was a 2019 Ford Escape, it was paid from insurance proceeds, the Escape having been totaled in an accident. Plan, Additional Provisions; Dckt. 24 at 7.

With respect to how the Bankruptcy Case is to proceed, counsel for Debtor **XXXXXXX**

~~----- Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because the settlement will end an adversary proceeding that saves all parties on the costs of protracted litigation while realizing a fair benefit to the Estate and Movant. The Motion is granted.~~

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

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

The Motion to Approve Compromise filed by Mark Mustybrook and Dionna Mustybrook, creditors in this case, (“Movant,” “Mustybrooks”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Approval of Compromise between Movant and ~~debtor Jim Hickerson (“Settlor,” “Mr. Hickerson”)~~ is granted, and the ~~respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 48).~~

10. [24-22035](#)-E-13
[DPC-1](#)

**WILLIE HYDE / BRANDY
NORMAN-HYDE**
Richard Jare

**OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK**
6-26-24 [\[22\]](#)

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, parties requesting special notice, and Office of the United States Trustee on Jun 26, 2024. By the court’s calculation, 20 days’ notice was provided. 14 days’ notice is required.

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

The Objection to Confirmation of Plan is sustained.
--

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

1. Willie Kenneth Hyde and Brandy Tiani Norman-Hyde (“Debtor”) could not be examined at the 341 Meeting because they failed to provide their government issued photo identification and proof of social number prior to the meeting as required. Obj. 1:23-28, Docket 22.
2. Debtor failed to submit proof of their social security numbers to the Trustee by the First Meeting of Creditors held on June 20, 2024, as required pursuant to §521(h)(2). Obj. at 2:9-13.
3. Debtor’s attorney’s monthly payment is too high. The Plan proposes to pay \$400.00 each month toward the Debtor’s attorney fee balance of \$6,500.00 under the “no look” fee of LBR 2016-1(c). The rule requires payment of the fee in “equal monthly installments over the term” of the plan, and the Plan has a 60-month term, the monthly payment is too high. Obj. at 2:19-23.

Trustee submits the Declaration of Kristen Koo to authenticate the facts alleged in the Objection. Decl., Docket 24.

DISCUSSION

Failure to Authenticate Identity

11 U.S.C. § 521(h)(1) and (2) states:

(h)If requested by the United States trustee or by the trustee, the debtor shall provide—

(1)a document that establishes the identity of the debtor, including a driver’s license, passport, or other document that contains a photograph of the debtor;
or

(2)such other personal identifying information relating to the debtor that establishes the identity of the debtor.

Here, Trustee has requested such documentation and Debtor has not complied. This is cause to sustain the Objection.

Attorney’s Fees

Local Bankruptcy Rule 2016-1(c)(4)(B) states, “[a]fter confirmation of the debtor(s)’ plan, the Chapter 13 trustee shall pay debtor(s)’ counsel equal monthly installments over the term of the most recently confirmed Chapter 13 plan a sum equal to the flat fee prescribed by subdivision (c)(1) less any retainer received.” Where the Plan proposes to pay \$400 per month, the Plan violates this rule because it will front load plan payments, thereby not paying attorney’s fees in equal monthly installments over the term of the most recently confirmed Plan.

At the hearing, **XXXXXXX**

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

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

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

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

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

11 thru 12

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

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 that have filed claims, and Office of the United States Trustee on May 22, 2024. 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 hearing on the Motion to Confirm the Amended Plan is continued to August 6, 2024 at 2:00 p.m. to be heard in conjunction with the Motion to Value.

The debtor, Satinder Singh ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for six monthly payments of \$3,994, three monthly payments of \$4,199, then monthly payments of \$4,734 to continue until Plan completion. Amended Plan § 2.01, Docket 221. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

However, the feasibility of this Plan relies on the Motion to Value the secured claim of Placerville Investment Group, LLC ("Creditor"), which is to be heard on August 6, 2024. Additionally, the court is saddened to learn of the untimely death of the Debtor. Debtor's death leaves open questions how the Plan will be funded as Debtor was going to use income from running his business to fund the Plan.

The hearing on the Motion to Confirm is continued to 2:00 p.m. on August 6, 2024.

CREDITOR'S OPPOSITION

Creditor filed an Opposition on July 2, 2024. Docket 248. Creditor requests the Motion be continued to August 6 to be heard in conjunction with the Motion to Value.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on July 2, 2024. Docket 246. Trustee also requests this Motion, and the related Motion to Substitute, be continued together. Trustee expresses concerns over how Debtor will fund the Plan, as well as informing the court that Debtor is current in Plan payments.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Satinder Singh (“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 continued to August 6, 2024 at 2:00 p.m. to be heard in conjunction with the Motion to Value.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors and parties in interest, and Office of the United States Trustee on June 25, 2024. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

The Motion to Substitute is granted.

Humas Madaan ("Mr. Madaan"), deceased Debtor Satinder Singh's son and only competent heir, seeks an order approving the motion to substitute Mr. Madaan for the deceased Debtor Satinder Singh ("Debtor"). This motion is being filed pursuant to Federal Rule of Bankruptcy Procedure 1016.

Debtor filed for relief under Chapter 13 on July 31, 2023. No Plan has yet been confirmed, issues having been ongoing regarding valuing property. On June 23, 2024, Debtor passed away. Mr. Madaan asserts that he is the lawful successor and representative of Debtor. Madaan Decl. 2:1-2, Docket 244.

Pursuant to Federal Rule of Bankruptcy Procedure 1016, Mr. Madaan requests authorization to be substituted in for the deceased debtor and to perform the obligations and duties of the deceased party in addition to performing his own obligations and duties. A Notice of Death was filed on June 25, 2024. Dckt. 243. Mr. Madaan is the son of the deceased party and is the successor's heir and lawful representative. Mr.

Madaan states he will continue to prosecute this case in a timely and reasonable manner. Madaan Decl. 2:1-2, Docket 244.

DISCUSSION

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

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

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

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

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

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

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

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

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

9 COLLIER ON BANKRUPTCY ¶ 1016.04 provides:

In a chapter 12 or 13 case, the confirmation and successful completion of a chapter 12 or 13 plan are almost always dependent upon the debtor’s future earnings. Thus, the debtor’s death will often lead to dismissal of the case because the debtor will likely have no future income. Alternatively, if a plan has been confirmed, the court may enter a hardship discharge under section 1328(b), which would preserve the benefits of discharge for the debtor’s estate.

The Motion was filed within the ninety-day period specified in Federal Rule of Bankruptcy Procedure 1016, following the filing of the Notice of Death. Based on the evidence provided, the court determines that further administration of this Chapter 13 case is in the best interests of all parties, and that Mr. Madaan, as the son of the deceased party and as the successor’s heir and lawful representative, may continue to administer the case on behalf of the deceased debtor, Satinder Singh. The court grants the Motion to Substitute Party.

The court waives the 11 U.S.C. § 1328(g) Certification requirement, the court finding it is not necessary for Mr. Madaan to complete this instructional course concerning personal financial management for the late Debtor.

However, the Motion also requests the court enter an order waiving other 11 U.S.C. § 1328 requirements without specifying which ones to be waived. The Motion requests: “Waiver of the certification requirements for entry of discharge in a Chapter 13 case, to the extent that the representative for or successor to the deceased or incompetent debtor can demonstrate an inability to provide such certifications.” Mot.

2:21-22, Docket 243. The court cannot issue a blanket order waiving all requirements without some specific facts warranting such a waiver and describing with particularity which certifications to be waived.

At the hearing, **XXXXXXX**

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

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

The Motion for Substitute After Death filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

~~**IT IS ORDERED** that the Motion is granted, and Humas Madaan is substituted as the successor-in-interest to Satinder Singh and is allowed to continue the administration of this Chapter 13 case pursuant to Federal Rule of Bankruptcy Procedure 1016.~~

~~**IT IS FURTHER ORDERED** that the requested waiver of 11 U.S.C. § 1328(g) Certification provided for the successor in interest, Mr. Madaan, is granted.~~

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, parties requesting special notice, and Office of the United States Trustee on June 26, 2024. 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:

1. Debtor failed to appear at the first Meeting of Creditors on June 20, 2024. Obj. 1:25-2:3, Docket 38.
2. No Payments have been made since the plan’s first payment of \$4,050.00 came due on June 25, 2024. Obj. 2:4-8, Docket 38.

Trustee submits the Declaration of Trina Hayek to authenticate the facts alleged in the Objection. Decl., Docket 40.

DISCUSSION

Trustee’s objections are well-taken.

Delinquency

Debtor is \$4,050.00 delinquent in plan payments, which represents one month of the \$4,050.00 plan payment. Before the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Failure to Appear at 341 Meeting

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

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

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

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

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

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

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

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 May 16, 2024. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

No opposition was stated at the hearing.

The Objection to Confirmation of Plan is XXXXXXX.

July 16, 2024 Hearing

At the prior hearing, the Parties reported to the court that they have filed their Stipulation for providing for this Claim in the Chapter 13 Plan with a 9.50% interest rate, resolving the Objection. The court continued the hearing on the Objection to Confirmation of Plan so Debtor can file and serve supplemental pleadings on or before June 25, 2024; and Replies, if any, shall be filed and served on or before July 2, 2024.

The Stipulation is found at Docket 32, filed on June 3, 2024, stating the claim of Creditor will be provided for at 9.5% interest rate.

Trustee filed an Opposition on July 2, 2024. Docket 39. Trustee states he requires evidence to show Debtor can afford Creditor's claim at 9.5%, as the increased plan payment bumps the monthly payment up to \$1,221.41 per month, an increase of at least \$400 per month.

At the hearing, **XXXXXXX**

REVIEW OF OBJECTION

Capital One Auto Finance, a division of Capital One, N.A. ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

1. Creditor holds a security interest in a 2019 Honda Ridgeline RT Pickup vehicle, VIN # 5FPYK2F54KB007833 and asserts a claim of \$22,931.69. The estimated replacement value a retail merchant would charge for the vehicle is \$19,035.00. The Creditor objects to the Plan as not paying the full value of the claim pursuant to 11 U.S.C. § 506(b). Obj. 2:2-6, 17-20, Docket 28.
2. The Plan fails to pay the applicable prime plus interest rate. Furthermore, the Debtor must pay the present value of the secured claim by paying the creditor a discount rate of interest as measured by the formula rate. *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). The current prime rate of interest is 8.5% and the creditor objects to the confirmation of the Plan proposing to pay less than the prime interest rate plus 1%. Obj. 2:21-3:2, Docket 28.
3. The Plan does not provide for equal monthly payments to Creditor. The Code requires the Plan be confirmed over an objection of a secured creditor only if the payments made under the Plan are "in equal monthly amounts." 11 U.S.C. § 1325(a)(5)(B)(iii)(I). As this Plan provides payments to Creditor on a pro rata basis, the Creditor objects. *Id.* at 3:3-6

Creditor submits the Declaration including the copy of the Motor Vehicle Retail Installment Sales Contract to authenticate the facts alleged in the Objection. Decl., Docket 30.

DISCUSSION

Creditor's objections are not well-taken.

Failure to Provide for a Secured Claim

Creditor asserts a claim of \$22,931.69 in this case. Obj. 2:2-6, 28; POC 7-1. Debtor's Schedule C estimates the current value of the vehicle is \$13,200 with Debtor owing \$6,600.00 of that. Schedule A/B 12, Docket 1. Debtor claimed \$7,500.00 exempt. Schedule C 17, Docket 1.

The Plan does not provide for treatment of this claim, and thus does not provide for the prime plus interest rate or equal monthly payments. Debtor does not provide for this Claim in the Plan. *See Plan*, Docket 3.

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

11 U.S.C. § 1322(b) specifies the provisions that a plan may include at the option of the debtor. With reference to secured claims, the debtor may not modify a claim secured only by the debtor's primary residence, but may modify other secured claims (11 U.S.C. § 1322(b)(2)). Notwithstanding the forgoing limitation, 11 U.S.C. § 1322(b)(3) authorizes the curing of any default on a secured claim—including a home loan. In addition, the Plan may provide for maintaining ongoing contract installment payments on a secured claim while curing default on such secured claim. 11 U.S.C. § 1322(b)(5).

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

- A. Provide a treatment that the debtor and creditor agree to (11 U.S.C. § 1325(a)(5)(A)),
- B. Provide for payment in full of the entire claim if the claim is modified or will mature by its terms during the term of the Plan (11 U.S.C. § 1325(a)(5)(B)), or
- C. Surrender the collateral for the claim to the creditor (11 U.S.C. § 1325(a)(5)(C)).

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

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

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

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

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

The Objection to the Chapter 13 Plan filed by Capital One Auto Finance, a division of Capital One, 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 Plan is **XXXXXXX**

15. [23-23959](#)-E-13
[CRG-4](#)

LASHUNDA PHILLIPS
Carl Gustafson

MOTION TO CONFIRM PLAN
5-24-24 [68]

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 parties in interest, parties requesting special notice, and Office of the United States Trustee on May 24, 2024. 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 XXXXXXX.
--

The debtor, Lashunda Kelly Phillips (“Debtor”), seeks confirmation of the Amended Plan. The Amended Plan provides “Debtor shall pay \$3,850 for three months, changing thereafter to \$10,850 starting March 2024, and changing thereafter to \$12,270 until plan completion.” Amended Plan § 7.01, Docket 72. The Plan further calls for paying any amount of their bonus over \$4,000 into the plan. *Id.* at § 7.02.11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on June 28, 2024. Docket 74. Trustee opposes confirmation of the Plan on the basis that:

- A. The terms surrounding the step up plan provisions are unclear, and as interpreted by Trustee, means Debtor is now delinquent \$2,767.51 under the proposed Plan. Opp'n 2:1-4, Docket 74.
- B. Debtor cannot afford the step up under the current Schedule J; however, a car payment is included in the proposed Plan but is also appearing on Schedule J, so if that payment were removed from Schedule J, Debtor could afford the step up. *Id.* at 2:14-23.

DISCUSSION

The step up provisions in the Plan do not provide for a definitive date beyond the first three months' of payments.

At the hearing, **XXXXXXX**

Debtor filed an Amended Schedule J on July 3, 2024, addressing the Trustee's concerns. This Schedule shows that Debtor can afford the step up, removing the expense of the car payment that is provided for in the Plan.

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

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor Lashunda Kelly Phillips ("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 24, 2024, 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, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on June 18, 2024. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is XXXXXXX.

Mortgage Assets Management, LLC f/k/a Reverse Mortgage Solutions, Inc. ("Creditor"), opposes confirmation of the Plan on the basis that:

1. Creditor is the beneficiary of a Deed of Trust encumbering the real property located at 2572 Yazoo Street Baton Rouge, Louisiana 70808 ("Property"). POC 3-1.
2. Debtor's chapter 13 plan proposes an insufficient valuation of the subject property. Mot. 2:9, Docket 15.
3. Debtor's chapter 13 plan fails to account for ongoing post-pet taxes and insurance. *Id.* at 2:10.

4. Debtor's is not the obligor on the underlying loan, therefore Debtor has no privity of contract and no privity of estate. *Id.* at 2:11.

Creditor does not submit a Declaration or other authenticated evidence in support. Creditor has filed what is identified as an Appraisal of the Property as of May 10, 2024, conducted by Justin Parrott.

It is mystifying to the court why and how no testimony or authenticated evidence is filed to support the Objection to Confirmation. Absent such evidence, the court could summarily overrule this Objection and have the parties proceed in this Case – their legal challenges multiplying.

However, as the court addresses below, the Supreme Court in *United Student Air Funds, Inc. v. Espinosa*, 559 U.S. 260 (2010), has made it clear that while the court is dependent on the parties for the evidence, the obvious applicable law cannot be ignored by the federal judges just because the parties seem to ignore it.

DISCUSSION

Creditor raises the issue that its claim is not properly provided for, having submitted a proof of claim in the amount of \$84,296.98 while debtor's Plan only accounts for the claim in the amount of \$75,000. *See* Plan § 3.08(d), Docket 3.

Beginning with the Plan, Section 3 provides that the amount of the Claim stated in the Proof of Claim controls over any amounts stated in the Schedules or in the Plan, unless there is an order of the court setting the amount of the claim. Plan, ¶ 2.02, 2.03.

Creditor has filed Proof of Claim 3-1 asserting the secured claim in the amount of (\$84,296.98), and that is the amount of the Secured Claim provided in Class 2 to be paid with 10% interest over the five year plan term. Using the Excel Mortgage Calculator, payment of the (\$84,296.98) amortized over sixty (60) months with 10% interest requires a monthly payment of \$1,791.06, not the \$1,593.33 stated in the Plan, ¶ 3.08 (Dckt. 3).

Thus, it appears that this 100% dividend Plan is a little under funded.

Creditor's Objection that the Plan provides for an insufficient value of the Claim is without merit.

There is feasibility issue of whether the Plan is sufficiently funded given that Creditor's claim is higher than the amount used to compute the monthly plan distribution, but that difference is only around \$178.00 a month.

Arrearage Interest Rate

Creditor's Objection states that the Plan seeks to cure the pre-petition arrearage over 120 months at 0% interest. Objection, p. 3:15-17; Dckt. 15.

For the term of the Plan, it is clearly stated to be 60 months, which is five years. Plan, ¶ 2.03. There is no 120 "arrearage cure" period.

Creditor's Claim is provided in Class 2, which requires that the claim must be paid in full over the term of the Plan, not merely cure the pre-petition arrearage and continue to make the regular post-petition and post-plan completion installments. The Class 2 treatment is to pay Creditor's claim in full, amortized over the 60 month term of the Plan with 10% interest.

This Objection appears to be without merit and misstates the terms of the proposed Chapter 13 Plan.

Debtor is not Obligor

Debtor's Property is collateral for the secured claim, and so she is able to modify the claim in her bankruptcy. Creditor cites to no law as to why a Debtor in bankruptcy cannot provide for a claim that is secured by property of the bankruptcy Estate.

Thus, this basis of the Objection is also without merit. *See In re Fostcedt*, 823 F.2d 305 (9th Cir. 1987); *see also In re Rhead*, 179 B.R. 169 (Bk. D. Of Arizona 1995).

Failure to Provide for Insurance and Taxes

Debtor's Schedule J does not provide for payment of insurance or property taxes for the property at issue. Dckt. 1 at 30-31.

At the hearing, **XXXXXXX**

July 12, 2024 Hearing

With respect to the funding of the Plan, at the hearing counsel for Debtor addressed the larger amount of Creditor's Secured Claim as set forth in the proof of claim, approximately \$178.00 a month, plus the Chapter 13 Trustee fees. Additionally, there are the property taxes and insurance expense for the Property.

At the hearing, **XXXXXXX**

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

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

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

The Objection to the Chapter 13 Plan filed by Mortgage Assets Management, LLC f/k/a Reverse Mortgage Solutions, Inc. ("Creditor") 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.

17. [23-22970](#)-E-13
[GMR-1](#)

DANIEL PUENTES

MOTION FOR COMPENSATION FOR
GEOFFREY RICHARDS, CHAPTER 7
TRUSTEE(S)
6-15-24 [\[82\]](#)

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 15, 2024. By the court's calculation, 31 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00).

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

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

Geoffrey Richards, the Chapter 7 Trustee, ("Applicant") files this Request for the Allowance of Fees and Expenses in this case. Debtor Daniel Puentes initially filed this case under Chapter 7 on August 30, 2023. Applicant was appointed as Chapter 7 Trustee and performed investigative work that ended up uncovering meaningful assets. Decl. ¶¶ 3-5, Docket 84. However, the case was converted to one under Chapter 13 on May 4, 2024 ("Docket 58"), so Applicant brings this Motion based on an hourly rate of \$325 per hour.

Applicant requests fees in the amount of \$3,607.50 and no costs. Mot. 1:19, Docket 82. Applicant further requests these fees be paid on a priority basis before other administrative claims. *Id.* at

2:17-18. Applicant has provided case law where courts have treated such a claim in the converted Chapter 13 case as an administrative expense, but Trustee has not shown why he is entitled to priority payment before other administrative claims. *See in re Colburn*, 231 B.R. 778, 781 (Bankr. D. Or. 1999).

4 COLLIER ON BANKRUPTCY ¶ 503.03[1][c] & [2], the section that deals with timing of payments of administrative expenses, states:

Section 1222(a)(2) and section 1322(a)(2) require that in chapter 12 and 13 cases, respectively, section 507 claims must be paid in full under the plan by deferred cash payments, unless the holder of the claim agrees otherwise. Thus, administrative expenses in a chapter 12 or 13 case must be paid—at the latest—over the term of the plan. However, similar to the Consolidated Appropriations Act, 2021 (“CAA”) exception to section 1129(a) for subchapter V debtors, the CAA provides exceptions to sections 1222(a)(2) and 1322(a)(2) that allow chapter 12 debtors and self-employed chapter 13 debtors to pay section 503(b)(10) administrative expenses under the terms of the Paycheck Protection Program loans. Sections 1226(b)(1) and 1326(b)(1) provide that before or at the time of each payment to creditors, the trustee must pay any unpaid claim under section 507(a)(2), as well as the percentage fee of the standing trustee, which suggests that administrative expenses should be paid before any other claims. Nonetheless, some courts require the fees of the debtor’s attorney to be paid over the entire life of the chapter 13 plan or over some specified period of time, such as the first year of the plan. . . Generally, courts have held that the timing for payment of administrative claims is a matter to be determined within the discretion of the bankruptcy court. Factors influencing the exercise of this discretion may include the status of the case, the ability of the debtor to pay present claims, the particular needs of the administrative claimants and the possibility that future administrative claims may not be paid in full.

At the hearing, counsel for the Trustee provided the court with the following basis by which the Trustee was asserting an administrative expense priority over all other administrative expenses in this bankruptcy case, and not the priority as provided in 11 U.S.C. § 507(a)(1)(C), which provides the administrative priority status for administrative expenses of a trustee appointed or elected pursuant to 11 U.S.C. §§ 701, 702, 703, 1104, 1202, or 1302. Counsel explained, **XXXXXXX**

The court notes that Debtor having converted this case once, Debtor no longer has an absolute right to dismiss the case under 11 U.S.C. § 1307(b). Debtor may only dismiss the case after a noticed hearing. Here, there appears to be assets that can be administered in bankruptcy for the benefit of creditors.

David Cusick, the Chapter 13 Trustee, filed a nonopposition on July 1, 2024, stating Applicant’s services were needed and the fees were reasonable. Nonopp’n 1:24-25, Docket 96. Mr. Cusick also informs the court he currently has a Motion to Reconvert this case back to one under Chapter 7 on the Docket. *See* Mot. to Reconvert, Docket 90.

APPLICABLE LAW

Reasonable Fees

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

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

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

- (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?

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

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

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

A review of the application shows that Applicant’s services for the Estate include uncovering and identifying assets that were not disclosed, including assets that would have resulted in a likely recovery for creditors had the case remained in Chapter 7. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant opened the case and entered data into the Trustee’s case management software system, reviewed the petition, schedules and statements, reviewed the debtors tax returns and pay information (“521 Documents”), reviewed the case with an attorney, reviewed mail and other documents provided, prepared for the 341(a) Meeting of Creditors, conducted the Debtor’s Examination and maintained a proper Trustee’s bond. Decl. 1:23-2:2, Docket 84.

Additional Efforts: Applicant employed counsel to represent him in the administration of assets in this case. Counsel and Applicant investigated assertions made by creditors regarding undisclosed assets, avoidable preferential transfers and the improper assertion of the homestead exemption, and possible equity in a corporation owned by the Debtor. This investigation eventually concluded with the Debtor’s decision to convert to Chapter 13. In the motion to convert the case, the Debtor asserted that he would pay creditors in full to include administrative expense associated with the Chapter 7 case. *Id.* at 2:2-8, Docket 84.

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Geoffrey Richards	11.5	Approx. \$325.00	\$3,607.50
Total Fees for Period of Application			\$3,607.50

FEES ALLOWED

Fees

Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. Fees in the amount of \$3,607.50 are approved pursuant to 11 U.S.C. § 330 ~~and authorized to be paid by on a priority basis before other administrative claims by the Chapter 13 Trustee from the available Plan Funds.~~

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

Fees	\$3,607.50
------	------------

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

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

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

The Motion for Allowance of Fees and Expenses filed by Geoffrey Richards, the Chapter 7 Trustee (“Applicant”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Geoffrey Richards is allowed the following fees and expenses as a professional of the Estate:

_____~~Geoffrey Richards, Professional of the Chapter 7 Bankruptcy Estate~~

_____~~Fees in the amount of \$3,607.50~~

_____~~as the final allowance of fees pursuant to 11 U.S.C. § 330.~~

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors and parties in interest, parties requesting special notice, and Office of the United States Trustee on July 1, 2024. By the court’s calculation, 15 days’ notice was provided. 21 days’ notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days’ notice). Movant is six days short of the required notice period. At the hearing, **XXXXXXX**

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

<p>The Motion to Sell Property is granted.</p>
--

The Bankruptcy Code permits Pablo Efrain Silva, Chapter 13 Debtor, (“Movant”) to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the real property commonly known as 337 Falcon Drive, Vallejo, Ca 94589 (“Property”).

The proposed purchaser of the Property is Debtor’s son, Pablo Silva Gomez (“Buyer”), and the terms of the sale are:

- A. The sales price is \$700,000. Mot. 1:27, Docket 53.
- B. Proceeds of the sale will pay off all liens of record, closing costs, and commissions. *Id.* at 2:28-3:1.
- C. The estimated balance of \$12,736.08 will be paid into the Plan to pay allowable claimants, and any excess then returned to Debtor. *Id.* at 3:2-3.

Secured creditors Brian Stewart Weiss, Trustee of the Brian Stewart Weiss Revocable Trust dated October 21, 2021 (“Creditor Weiss”) and CMG Mortgage, Inc., by and through its servicing agent Cenlar FSB (“Creditor CMG”) filed nonoppositions on July 2, 2024, and July 5, 2024, respectively. Dockets 58, 60. Both creditors support the sale, so long as their liens are paid in full.

Grounds Stated in Motion

The Motion states that the Property is Debtor’s personal residence, and that he has entered into a Purchase Agreement and Join Escrow Instructions to sell the Property to his son for \$700,000. Motion, ¶ 4; Dckt. 53. A copy of the Agreement is provided as Exhibit A.

Exhibit A; Dckt. 56; is the Purchase Agreement. The terms include:

1. Buyer’s Deposit is \$1,000.00.
2. The sale is conditioned on Buyer obtaining a loan for \$675,500 (96.50% of the purchase price).

Opposition of Chapter 13 Trustee

On July 12, 2024, the Chapter 13 Trustee filed his opposition to the Motion to Sell. Dckt. 62. The first basis for the Opposition is that insufficient notice was provided and that not all disclosures as required by Local Bankruptcy Rule 9014-1(D)(3)(B)(iii), including telling parties in interest that they may check for the posting of a tentative or final ruling.

Feasibility

The Trustee asserts that the Motion is vague and does not provide sufficient information for the Trustee to consider whether to oppose the Motion. The missing information stated by the Trustee includes:

- A. No title company and escrow company are identified to allow the Trustee to make his demand in escrow and give specific instructions.
- B. This is not an arms length transaction and the Debtor is selling the property to his son, and no evidence has been provided to show this is the fair market value.
- C. The Trustee computes that there will need to be \$225,000 paid in the Plan to complete payments, while the Debtor states the amount is \$12,736.08. It is not clear whether the proceeds will be paid into the Plan to complete it with a lump sum payment or Debtor will continue to make month payments.
- D. The Trustee also notes that Debtor has claimed an exemption in the proceeds from the sale of the Property, and requests that the court order the proceeds be held in a blocked account pending reinvestment in a residence within six months after the sale.
- E. The Sale Agreement has the box checked that there are real estate brokers involved, but the Debtor has not obtained the authorization to so employ a real estate professional.

- F. No estimated closing statement has been provided.
- G. If the Debtor intends to keep the proceeds and make monthly plan payments, no Supplemental Schedules I and J have been filed in light of what is a significant change in Debtor's housing and related expenses.

DISCUSSION

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

With respect to the Buyer, an almost 100% purchase loan to value condition, the missing information provided by the Trustee, at the hearing, **XXXXXXX**

~~Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because Creditors Weiss and CMG will be paid in full from proceeds of the sale, leaving some excess to go to unsecured creditors. The sales price of \$700,000, after costs of sale, will leave enough in proceeds to pay Creditor Weiss' lien in the approximate amount of \$120,342.93 and Creditor CMG's claim in the approximate amount of \$302,049.27.~~

Movant has not suggested there will be any broker's fees, and the court found nothing in the California Residential Purchase Agreement suggesting any brokers were involved.

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

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

The Motion to Sell Property filed by Pablo Efrain Silva, Chapter 13 Debtor, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED ~~that Pablo Efrain Silva, Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Pablo Silva Gomez or nominee ("Buyer"); the Property commonly known as 337 Falcon Drive, Vallejo, Ca 94589 ("Property"); on the following terms:~~

- ~~A. The Property shall be sold to Buyer for \$700,000, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 56, and as further provided in this Order.~~
- ~~B. The sale proceeds shall first be applied to closing costs, prorated real property taxes and assessments, liens, and other customary and contractual costs and expenses incurred to effectuate the sale.~~

~~C. The Chapter 13 Debtor is authorized to execute any and all documents reasonably necessary to effectuate the sale.~~

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

~~If a dispute between the Chapter 13 Debtor and the Chapter 13 Trustee shall arise as to such amount, then the amount stated in the Chapter 13 Trustee's demand shall be disbursed to the Chapter 13 Trustee and resolution of any such dispute shall be made by this court.~~

~~E. After payment of the amounts provided above, including the disbursement to the Chapter 13 Trustee directly from escrow, any remaining net sale proceeds may be disbursed directly from escrow to the Chapter 13 Debtor.~~

~~F. Within fourteen days of the close of escrow, the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement.~~

FINAL RULINGS

19. [23-23735-E-13](#)
[SMJ-3](#)

MARY JAYNE MCINTYRE
Scott Johnson

MOTION TO MODIFY PLAN
5-30-24 [\[32\]](#)

Final Ruling: No appearance at the July 16, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, attorneys of record who have appeared in the case, and Office of the United States Trustee on May 30, 2024. By the court's calculation, 47 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.
--

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Mary Jayne McIntyre ("Debtor"), has filed evidence in support of confirmation. *See* Decl, Docket 34. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on July 2, 2024. Docket 37. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Mary Jayne McIntyre (“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 30, 2024, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

20. [24-21235-E-13](#)
[DPC-2](#)

ASHLEY/JEFF VANHEE
Joe Laub

**OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS**
6-7-24 [48]

Final Ruling: No appearance at the July 16, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, parties requesting special notice, and Office of the United States Trustee on June 7, 2024. By the court’s calculation, 39 days’ notice was provided. 28 days’ notice is required.

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

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

The Chapter 13 Trustee, David Cusick (“Trustee”) objects to Ashley VanHee and Jeff VanHee’s (“Debtor”) claimed exemptions under California law. Trustee asserts:

1. Debtor has improperly opted into the federal homestead exemption of 11 U.S.C. § 522(b)(3), but California has opted out of those exemptions under Cal. Code. Civ. Pro. §703.130(a). Obj. 1:23-2:6, Docket 48.
2. Debtor has also claimed certain interest exempt for 100% of fair market value, which is not permitted as debtors must claim a specific amount as exempt. *Id.* at 2:7-19.
3. Debtor does not cite to specific code sections for most of the claimed exemptions. *Id.* at 2:13.

DISCUSSION

11 U.S.C. § 522 states:

(b)

(1) Notwithstanding section 541 of this title, an individual debtor may exempt from property of the estate the property listed in either paragraph (2) or, in the alternative, paragraph (3) of this subsection. In joint cases filed under section 302 of this title and individual cases filed under section 301 or 303 of this title by or against debtors who are husband and wife, and whose estates are ordered to be jointly administered under Rule 1015(b) of the Federal Rules of Bankruptcy Procedure, one debtor may not elect to exempt property listed in paragraph (2) and the other debtor elect to exempt property listed in paragraph (3) of this subsection. If the parties cannot agree on the alternative to be elected, they shall be deemed to elect paragraph (2), where such election is permitted under the law of the jurisdiction where the case is filed.

(2) Property listed in this paragraph is property that is specified under subsection (d), **unless the State law that is applicable to the debtor under paragraph (3)(A) specifically does not so authorize.**

(3) Property listed in this paragraph is—

(A) **subject to** subsections (o) and (p), any property that is exempt under Federal law, other than subsection (d) of this section, or **State or local law that is applicable on the date of the filing of the petition** to the place in which the debtor's domicile has been located for the 730 days immediately preceding the date of the filing of the petition or if the debtor's domicile has not been located in a single State for such 730-day period, the place in which the debtor's domicile was located for 180 days immediately preceding the 730-day period or for a longer portion of such 180-day period than in any other place;

(Emphasis added). Cal. Code. Civ. Pro. §703.130(a) states:

Pursuant to the authority of paragraph (2) of subsection (b) of Section 522 of Title 11 of the United States Code, the exemptions set forth in subsection (d) of Section 522 of Title 11 of the United States Code (Bankruptcy) are not authorized in this state.

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

Here, California law does not allow Debtor to claim the federal homestead exemption of 11 U.S.C. § 522(b)(3), California opting out of that scheme. Debtor also cannot claim 100% of fair market value as exempt and must give an actual exemption amount, Debtor not citing any law that entitles him to a 100% of fair market value exemption. Finally, Debtor must provide specific code sections for each exemption claimed as well as amount claimed. The Chapter 13 Trustee’s Objection is sustained, and the claimed exemptions are disallowed.

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

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

The Objection to Claimed Exemptions filed by 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 Objection is sustained, and all of the claimed exemptions in Debtor’s Schedule C at Docket 26 are disallowed in their entirety. This is without prejudice to Debtor filing an Amended Schedule C.

21. [24-21255](#)-E-13
[DPC](#)-1

ANGELA TORRES
Jasmin Nguyen

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY
DAVID P. CUSICK
5-15-24 [[17](#)]

Final Ruling: No appearance at the July 16, 2024 Hearing is required.

The Objection to Confirmation is overruled without prejudice as moot, the Chapter 13 Case having been voluntarily dismissed on July 8, 2024, after Debtor filed her own Motion to Dismiss. Docket 31.

Final Ruling: No appearance at the July 16, 2024 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Ch. 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 4, 2024. By the court’s calculation, 42 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days’ notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days’ notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Loris Bakken, the Attorney (“Applicant”) for Geoffrey Richards, the Chapter 7 Trustee (“Client”), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period October 16, 2023 through July 16, 2024. The order of the court approving employment of Applicant was entered on October 16, 2023. Dckt. 24. Applicant requests fees in the amount of \$6,320.00 and costs in the amount of \$30.79 for her work performed while the case was in Chapter 7. This amount is reduced from her actual earned fees of \$10,680. Mot. 1:28, Docket 76. The case was converted to one under Chapter 13 on May 4, 2024. Docket 58.

David Cusick, the Chapter 13 Trustee, filed a nonopposition on July 1, 2024. Docket 98. Mr. Cusick has filed a Motion to Reconvert back to a case under Chapter 7 on June 26, 2024. Docket 90.

APPLICABLE LAW

Reasonable Fees

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

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

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

- (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?

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

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

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

A review of the application shows that Applicant’s services for the Estate include general case administration, investigation of ownership and valuation of estate property, and advising on the motion to convert. Mot. 2:16-4:21, Docket 76. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 8.5 hours in this category. Applicant prepared fee agreement and reviewed the potential objection to Debtor’s discharge. Mot. 2:16-25, Docket 76.

Efforts to Assess and Recover Property of the Estate: Applicant spent 13.4 hours in this category. Applicant investigated validity of claimed exception by reviewing mortgage, fire insurance, utility, bank, and tax information to verify Debtor’s entitlement to homestead exemption. Mot. 2:26-4:9, Docket 76.

Significant Motions and Other Contested Matters: Applicant spent 4.8 hours in this category, but is only billing for 2.4. Applicant reviewed the Motion to Convert case to Chapter 13. Mot. 3:9-21, Docket 76.

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Loris Bakken	24.3	\$260.08	\$6,319.94
Total Fees for Period of Application			\$6,320.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$30.79 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Postage	-----	\$23.09
Copying	\$0.10	\$7.70
Total Costs Requested in Application		\$30.79

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$6,320.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case.

Costs & Expenses

First and Final Costs in the amount of \$30.79 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case.

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

Fees	\$6,320.00
Costs and Expenses	\$30.79

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

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

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

The Motion for Allowance of Fees and Expenses filed by Loris Bakken, the Attorney (“Applicant”) for Geoffrey Richards, the Chapter 7 Trustee (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Loris Bakken is allowed the following fees and expenses as a professional of the Estate:

Loris Bakken, Professional employed by Geoffrey Richards, the Chapter 7 Trustee

Fees in the amount of \$6,320.00
Expenses in the amount of \$30.79,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as
counsel for the Chapter 7 Trustee.

23. [24-22599-E-13](#)
[CYB-1](#)

JAMES JOHNSON

**CONTINUED MOTION TO EXTEND
AUTOMATIC STAY
6-26-24 [16]**

Final Ruling: No appearance at the July 15, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors and parties in interest, parties requesting special notice, and Office of the United States Trustee on June 26, 2024. By the court's calculation, 6 days' notice was provided. The court set the hearing for July 2, 2024. Dckt. 23.

The Motion to Extend the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). 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.

No opposition was stated at the July 2, 2024 hearing.

No Opposition was filed for the continued hearing on July 15, 2024, the court having set a deadline of July 12, 2024 for the filing of such opposition. Order; Dckt. 28. The court has determined that oral argument will not be of assistance in rendering a decision in this matter.

The Motion to Extend the Automatic Stay is granted, and the Automatic Stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all for all purposes and parties, unless terminated by operation of law or further order of this court.

REVIEW OF THE MOTION

James Roy Johnson (“Debtor”) seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor’s second bankruptcy petition pending in the past year. Debtor’s prior bankruptcy case (No. 22-20815) was dismissed on May 5, 2024, after Debtor became delinquent in plan payments. *See* Order, Bankr. E.D. Cal. No. 22-20815, Dckt. 73, May 2, 2024. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because Debtor’s income was his social security under the previous Plan. Debtor was also supplementing his income with funds from his retirement and investments accounts. Debtor was unable to obtain a reverse mortgage under the previous Plan, and so his previous case was dismissed. Decl. 2:1-5, Docket 18. However, since the filing of No. 22-20815, Debtor was hospitalized and has made the decision to sell his primary residence and pay off debts all debts at 100%. Mot. 2:15-18, Docket 16.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). As this court has noted in other cases, Congress expressly provides in 11 U.S.C. § 362(c)(3)(A) that the automatic stay **terminates as to Debtor**, and nothing more. In 11 U.S.C. § 362(c)(4), Congress expressly provides that the automatic stay **never goes into effect in the bankruptcy case** when the conditions of that section are met. Congress clearly knows the difference between a debtor, the bankruptcy estate (for which there are separate express provisions under 11 U.S.C. § 362(a) to protect property of the bankruptcy estate) and the bankruptcy case. While terminated as to Debtor, the plain language of 11 U.S.C. § 362(c)(3) is limited to the automatic stay as to only Debtor. The subsequently filed case is presumed to be filed in bad faith if one or more of Debtor’s cases was pending within the year preceding filing of the instant case. *Id.* § 362(c)(3)(C)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209–10 (2008). An important indicator of good faith is a realistic prospect of success in the second case, contrary to the failure of the first case. *See, e.g., In re Jackola*, No. 11-01278, 2011 Bankr. LEXIS 2443, at *6 (Bankr. D. Haw. June 22, 2011) (citing *In re Elliott-Cook*, 357 B.R. 811, 815–16 (Bankr. N.D. Cal. 2006)). Courts consider many factors—including those used to determine good faith under §§ 1307(c) and 1325(a)—but the two basic issues to determine good faith under § 362(c)(3) are:

- A. Why was the previous plan filed?
- B. What has changed so that the present plan is likely to succeed?

In re Elliot-Cook, 357 B.R. at 814–15.

Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay. Debtor has made the decision to sell his home and pay off all creditors due to his new medical condition since being hospitalized. Decl. 2:13-15, Docket 18. Debtor made substantial payments under the previous Plan, having paid \$61,608. Debtor plans to make adequate protection payments until the home is sold, meaning the mortgagee will not be stuck waiting around for a sale to occur and will be receiving some money each month. *Id.* at 2:20-23.

The Motion is granted, and the automatic stay is extended on an interim basis through and including July 29, 2024, for all purposes and parties, unless terminated by operation of law or further order of this court.

July 16, 2024 Hearing

The court continued the Hearing on this Motion to afford parties in interest a chance to oppose granting relief. Opposition was to be filed by July 12, 2024 at 12:00 p.m. As of the court's review of the Docket on July 12, 2024, no Oppositions have been filed.

As stated in the Minutes above from the initial hearing, Debtor has rebutted the presumption of bad faith.

The Motion is granted, and the automatic stay is extended on an interim basis through and including July 29, 2024, for all purposes and parties, unless terminated by operation of law or further order of this court.

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

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

The Motion to Extend the Automatic Stay filed by James Roy 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 the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.