

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

July 21, 2020 at 3:00 p.m.

1.	<u>20-20111</u> -E-13 <u>MJD</u> -4	ROSS SANCHEZ Matthew J. DeCaminada	MOTION TO CONFIRM PLAN 6-9-20 <u>[55]</u>
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on June 9, 2020. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.
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The debtor, Ross Sanchez ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly payments in the amount of \$3,700.00 for eight (8) months beginning June 25, 2020, followed by monthly payments in the amount of \$4,525.00 for the remainder of the Plan, and a zero (0) percent dividend to unsecured claims totaling \$16,192.11. Amended Plan, Dckt. 59. 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 July 7, 2020. Dckt. 61. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor is delinquent in Plan payments.
- B. Debtor may not be able to make payments.
- C. Debtor's Nonstandard Provisions are unclear.

DISCUSSION

Delinquent

Debtor is \$3,700.00 delinquent in plan payments, which represents one month of the \$3,700.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor's budget in Schedules I and J show a monthly net income of \$3,725.69 which is insufficient to fund the \$4,525.00 payment for 47 months. According to Trustee, even if Debtor were to stop the monthly family assistance payments in the amount of \$400.00, Debtor's net income would be in the amount of \$4,125.69 which would still be insufficient to fund \$4,525.00 plan payments. *See* Dckt. 21. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Nonstandard Provisions are Unclear

Trustee takes issue with section 7.02 which states "administrative expenses shall receive priority over Class 1 creditor's pre-petition mortgage arrears. Administrative expenses shall receive a monthly dividend of \$729.49 starting month five (5) until the claim is paid off." Dckt. 59. Trustee contrasts Section 7.02 with Section 3.06 of the Plan which covers administrative expenses and states "\$0.00 x 1; \$150.77 x 11; \$875.27 thereafter." *Id.* Trustee asserts the administrative payments to be made are unclear. Without clear provisions, the court cannot determine whether the Plan is confirmable.

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

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Ross Sanchez ("Debtor") having been presented to the court, and upon review of the

pleadings, evidence, arguments of counsel, and good cause appearing,

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

2. [20-20212-E-13](#) **SHANNON BUTLER** **MOTION TO CONFIRM PLAN**
[BMV-3](#) **Bert M. Vega** **6-4-20 [53]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on June 4, 2020. By the court’s calculation, 47 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 denied.</p>

The debtor, Shannon Butler (“Debtor”), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly payments of \$523.00 for 36 months with a zero (0) percent dividend to unsecured claims totaling \$29,476.00. Amended Plan, Dckt. 57. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on June 30, 2020. Dckt. 72. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor may not be able to make payments under the Plan.

- B. Debtor's Plan relies on a pending Motion to Value Collateral.

DISCUSSION

Debtor's Reliance on Motion to Value Secured Claim

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Ally Financial. Debtor has filed a Motion to Value the Claim of Ally Financial that is set for hearing on July 14, 2020. However, Trustee notes even if the Motion to Value is denied, Debtor will be able to afford the monthly payments of at least \$304.42 to pay off the claim within 46 months.

On July 14, 2020, Debtor's Motion to Value was granted, and Creditor's claim was determined to have a value of \$8,350, as sought by the Debtor. Dckt. 35.

Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Trustee raises issues with three of the nonstandard provisions as follows:

- A. Section 7.01 states "This modifies Section 3.12 of the plan in that the Debtor shall pay TN DHS thru their State Disbursement Unit directly in full which will be less than the claimed amount because the mother agreed for a less amount which is still unknown because the mother has not communicated what is the amount to be paid." Trustee is unclear whether the creditor has agreed to be paid less based on the filed claim in the amount of \$27,605.50. *See* Claim 2-1. Debtor would need to make payments in the amount of \$766.83 per month for 36 months without interest.
- B. Section 7.02 provides payment to the Clerk of the Court for Riverside County in Blythe, California to pay off the "DUI fines of \$4,918.68" where no proof of claim has been filed. The Plan does not provide the Creditor will be paid if no claim is filed, and failure to pay this debt may affect Debtor's ability to comply with the Plan.
- C. Section 7.03 states "This modifies Section 3.12 of the plan in that the Debtor shall pay thru the plan the Franchise Tax Board the amount of \$92.00 to pay for the unsecured property debt of \$3,292.34." Trustee is unsure why the dividends listed for sections 7.02 and 7.03 are necessary if priority claims are usually paid in full.

As to Section 7.04 regarding making up for payments by June 30, 2020, Trustee does not raise an objection with this section but notes that Debtor will likely be current in payments after Debtor having paid Trustee \$1,582, and there being a scheduled electronic payment of \$1,033.00 that will most likely clear by July 1, 2020.

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

At the hearing, ~~xxxxxxxxxxxxxxxx~~.

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

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

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

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

~~_____ **IT IS ORDERED** that the Motion to Confirm the Amended Plan is denied, and the proposed Chapter 13 Plan is not confirmed.~~

**REVERSE MORTGAGE FUNDING,
LLC VS.**

**NO APPEARANCE OF COUNSEL IS REQUIRED
UNLESS TO ADDRESS ANY ISSUES CONCERNING
THE COURT'S ORDER GRANTING RELIEF**

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, and Office of the United States Trustee on April 6, 2020. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

**The Motion for Relief from the Automatic Stay is resolved as provided in the
Stipulation for Adequate Protection.**

Reverse Mortgage Funding, LLC ("Movant") seeks relief from the automatic stay with respect to Lydia Alvarado Ramirez's ("Debtor") real property commonly known as 2 Dakota Court, Sacramento, California ("Property"). Movant has provided the Declaration of Rigoberto Corona to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues Debtor has failed to maintain post-petition flood insurance on the subject property. Declaration, Dckt. 64. Creditor was forced to advance payment in the amount of \$1,167.48 to cover flood insurance policy dated July 31, 2017 through September 29, 2017 and flood insurance policy dated September 29, 2019 through September 29, 2020. *Id.*

Movant also argues that Debtor lists the value of the Property on Schedule A to be \$242,150.00, which the obligation owed to Movant is currently (\$337,098.08). Further, that the Property is the Debtor's residence and not an income source to fund a plan.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick (“the Chapter 13 Trustee”) filed a Response on April 20, 2020. Dckt. 68. Trustee asserts that Debtor is current under the confirmed plan and has paid a total of \$25,310.00 to date. *Id.* at p.1. Further, Trustee points out that creditor Champion Mortgage Company (Nationstar Mortgage LLC, DBA) filed a Proof of Claim, which has been provided for and paid. *Id.* at pp.1-2. No transfer of claim has been reported on PACER; however, Movant’s exhibits include the assignment of the deed of trust from Champion Mortgage Company to Movant. *Id.* at p.1.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$337,098.08 (Declaration, Dckt. 64), while the value of the Property is determined to be \$242,150.00, as stated in Schedules A/B and D filed by Debtor.

11 U.S.C. § 362(d)(1): Grant Relief for Cause

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because “cause” is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff’d sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

11 U.S.C. § 362(d)(2)

A debtor has no equity in property when the liens against the property exceed the property’s value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective rehabilitation. 11 U.S.C. § 362(g)(2); *United Sav. Ass’n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988); 3 COLLIER ON BANKRUPTCY ¶ 362.07[4][b] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.) (stating that Chapter 13 debtors are rehabilitated, not reorganized). Based upon the evidence submitted to the court, and no opposition or showing having been made by Debtor or the Chapter 13 Trustee, the court determines that there is no equity in the Property for either Debtor or the Estate.

Ruling on Relief Requested

The cause grounds are that Movant has been forced to advance to protect its secured claim the modest, though required to be paid, amount for flood insurance in the sum of \$1,167.48. It is asserted that Debtor has not cured this amount or that they will maintain the insurance going forward.

As the Trustee has noted, Debtor has made substantial payments under the Plan. Debtor is now starting year five of the plan, which may be blown-up over this modest amount. It appears that the only reason this case exists is to address Movant's claim defaults.

The Modified Plan in this case was confirmed in 2018 without a hearing due to no opposition having been filed. Civil Minutes, Dckt. 56. In looking back at the financial information filed in support of such motion, Debtor's expense information appears questionable. (Debtor was represented at the time by a difference counsel than is representing her now.)

On her statement of expenses, Exhibit B (Dckt. 49 at 4-5), Debtor lists having a family unit of two persons - the Debtor and a 54 year old child who is a dependent. There is no income contribution (whether from wages, Social Security, or other benefits) from the 54 year old child. The monthly expenses of (\$1,433) appear to be significantly understated for a family unit of two persons.

This Motion may be bringing to light a bigger issue concerning this Debtor, who in light of having a now 57 year old child, would appear to be a "senior citizen."

For Movant, this modest arrearage is now forcing it to incur a substantial loss on a reverse mortgage. Having a claim of \$337,098.08, but with the property worth only \$242,150.00, the downside appears to be:

FMV	\$242,150.00
Foreclosure costs and expenses, property taxes, insurance and security for the period having to hold the property for marketing and sale	(\$20,000.00)
Costs of Sale (without taking into account repairs)	(\$19,372.00)
Projected Recovery from Collateral	\$202,778.00

Thus, it appears that Movant will end up suffering a 40% loss if it proceeds against the collateral.

It appears that there are better alternatives for everyone concerning this property and the obligation.

At the May 5, 2020 hearing, the attorneys reported that an adequate protection stipulation was being prepared, and a continuance is requested to finalize the stipulation and lodge a proposed order with the court.

June 9, 2020 Hearing

A review of the Docket (as of May 6, 2020) reveals that no stipulation has been filed and no other responses or status updates have been filed by either Party.

At the continued hearing a month later on June 9, 2020, counsel for Movant stated an adequate protection stipulation has been signed and the proposed order will be forwarded to the Chapter 13 Trustee for lodging with the court. The parties requested a continuance so that the matter may be concluded and the proposed order lodged with the court.

June 23, 2020 Hearing

No further pleadings have been filed.

At the continued hearing, the parties requested further continuance to allow for the court to review the Stipulation Granting Adequate Protection Payments filed the day before the hearing on June 22, 2020. Dckt. 75.

June 22, 2020 Stipulation

On June 22, 2020 the parties filed a Stipulation wherein Debtor proposed and Creditor agreed to the proposed adequate protection payment. Dckt. 75. There is also an unsigned order form that has been approved as to form by the Chapter 13 Trustee filed in this case. Dckt. 78.

The Stipulation provides for reasonable adequate protection payments to be made by the Debtor, a notice of default procedure, and for the entry of an order granting relief from the stay in the event the Debtor fails to timely cure the default. The court takes two exceptions with respect to the Stipulation. First, the court takes exception with the Stipulation in that it calls for the court to enter an order granting relief from the stay based on Movant only filing a declaration in the event of the default by Debtor. The court instead (to stay consistent with Fed. R. Bank. P. 9013) orders its “standard” *ex parte* supplemental motion procedure. Second, the court does not terminate the stay automatically if the case is converted.

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

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

The Motion for Relief from the Automatic Stay filed by Reverse Mortgage Funding (“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 relief is granted for Adequate Protection as provided in the Stipulation of the Parties filed in this case, Dckt. 75, and incorporated herein by this reference.

IT IS FURTHER ORDERED that in the event of a default in an adequate protection payment or other provision of the Stipulation Creditor shall provide written notice of the default as provided in the Stipulation. The Debtor shall have 10-days to cure the monetary default.

- a. If the monetary default is not timely cured, Creditor may file an *ex parte* motion to amend this adequate protection order and seek the termination of

the automatic stay based on the default in one or more of the terms of this adequate protection order.

- i. The *ex parte* motion and supporting evidence of the default and failure to cure (if it is a monetary default) shall be served on the Debtor, Counsel for the Debtor, the Chapter 13 Trustee, and the U.S. Trustee.
- ii. The Debtor or Chapter 13 Trustee shall have 10 days to file an opposition to the *ex parte* motion, with the only issue being whether the Debtor failed to timely cure a default in any adequate protection payment required under this order. The Debtor or Chapter 13 Trustee shall notice a hearing on the *ex parte* motion for a supplemental order for the first regular law and motion hearing date on this court's Modesto calendar which is at least 14 days after service of the *ex parte* Motion by Creditor.
- iii. The only issues for the court at the hearing are whether the Debtor defaulted in adequate protection payments or other actions set forth in this order, and if a monetary default, if such default was not timely cured.

IT IS FURTHER ORDERED that the court denies stipulated relief providing for the automatic termination of the automatic stay in the event the case is converted to one under Chapter 7. If converted, Movant may seek supplemental relief in this contested matter by filing a notice motion for relief using this docket control number, with no further filing fee required.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 26, 2020. By the court's calculation, 25 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, -----
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The Motion for Allowance of Professional Fees is granted.
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Mark A. Carpenter, the Attorney ("Applicant") for Monica Steinhart, the Chapter 13 Debtor ("Client"), makes a Request for the Additional Allowance of Fees and Expenses in this case.

Fees are requested for the period May 8, 2020, through June 8, 2020. Applicant requests fees in the amount of \$4,667.68.

Trustee's Response

Trustee filed a Response indicating non-opposition on July 7, 2020, Dckt. 87. However, Trustee notes that it seems that Applicant does not account for time spent preparing the instant fee or appearing at its hearing. *Id.*

APPLICABLE LAW

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or

(ii) services that were not—

(I) reasonably likely to benefit the debtor's estate;

(II) necessary to the administration of the case.

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

Reasonable Fees

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

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

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

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

Reasonable Billing Judgment

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

- (a) Is the burden of the probable cost of legal services disproportionately large in relation to the size of the estate and maximum probable recovery?
- (b) To what extent will the estate suffer if the services are not rendered?
- (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

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

A review of the application shows that Applicant’s for the Estate include correspondence with Client, applications to shorten time, preparing a Motion to Sell on shortened time, preparing a Motion to Employ on shortened time, and preparing declarations and exhibits for the motions. The Estate has \$5,000.00 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

“No-Look” Fees

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

(a) Compensation. Compensation paid to attorneys for the representation of chapter 13 debtors shall be determined according to Subpart (c) of this Local Bankruptcy Rule, unless a party-in-interest objects or the attorney opts out of Subpart (c). The failure of an attorney to file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys, shall signify that the attorney has opted out of Subpart (c). When there is an objection or when an attorney opts out, compensation shall be determined in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and any other applicable authority.”

...

(c) Fixed Fees Approved in Connection with Plan Confirmation. The Court will, as part of the chapter 13 plan confirmation process, approve fees of attorneys representing chapter 13 debtors provided they comply with the requirements to this Subpart.

(1) The maximum fee that may be charged is \$4,000.00 in nonbusiness cases, and \$6,000.00 in business cases.

(2) The attorney for the chapter 13 debtor must file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys.

(3) If the fee under this Subpart is not sufficient to fully and fairly compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees. The fee permitted under this Subpart, however, is not a retainer that, once exhausted, automatically justifies a motion for additional fees. Generally, this fee will fairly compensate the debtor’s attorney for all preconfirmation services and most postconfirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims filed. Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation. Form EDC 3-095, Application and Declaration RE: Additional Fees and Expenses in Chapter 13 Cases, may be used when seeking additional fees. The necessity for a hearing on the application shall be governed by Fed. R. Bankr. P. 2002(a)(6).

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed \$4,000.00 in attorneys’ fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 54. Applicant prepared the order confirming the Plan.

Lodestar Analysis

If Applicant believes that there has been substantial and unanticipated legal services that have been provided, then such additional fees may be requested as provided in Local Bankruptcy Rule 2016-

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

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

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Correspondence with Client and Administration: Applicant spent 5.06 hours in this category. Applicant communicated extensively with client, reviewed claims and payments made to creditors, and retrieved an order from the Clerk of the Court.

Motions and Applications: Applicant spent 8.5 hours in this category. Applicant prepared Applications to Shorten Time, a Motion to Sell and Motion to Value on shortened time, and prepared exhibits, cover sheets, and declarations for the motions.

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
Marc. A. Carpenter	13.56	\$335.00	\$4,542.60

Total Fees for Period of Application	\$4,542.60
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The court notes that there seems to be a clerical error in calculations. The time spent multiplied by the hourly rate in this case equals \$4,542.60, instead of the \$4,667.68 stated.

OPPOSITION FILED BY DEBTOR

On July 17, 2020, the Debtor filed an opposition in *pro se* to the fees requested by her counsel. Though not timely filed, the court has reviewed the opposition given the unique legal relationship of a debtor client and that debtor's attorney.

In the Opposition, Dckt. 89, Debtor expresses displeasure with Applicant, asserting that any time pressure in presenting the Motion to Sell arose due to Applicant's failure to act promptly. By Debtor's assertions, she contacted Applicant on May 8, 2020, about the sale, having been told by the escrow officer that bankruptcy approval would be required.^{FN. 1}

 FN. She parenthetically comments that she understood Applicant tell her that her home was not included in the bankruptcy. Looking at the Plan in this case, Debtor's home mortgage payments were made directly by Debtor, providing for the creditor with the lien on Debtor's residence as having a Class 4 Claim. By making the direct payments, no Chapter 13 Trustee's commission was paid by the Debtor. Some attorney's shorthand Class 4 treatment as saying that the Class 4 Claim is not being paid included in the bankruptcy, meaning it is not paid through the Chapter 13 trustee (with the required trustee commission) under the Plan, but directly by the debtor. The property is in the bankruptcy case and the Class 4 treatment is as required by the Chapter 13 Plan.

 Debtor states that she sent him proof of the offer on the home on May 8, 2020, at which time Applicant was to begin working on the motion for sale of the property. On May 12, 2020, Debtor says that she again contacted Applicant, who told her (again) the process for obtaining court approval. Debtor states she contacted Applicant again on May 13, 2020, to see if Applicant had everything he needed to file within the next week the motion for the sale. Debtor states that it was not until May 20, 2020, that Applicant contacted her and requested a copy of the full purchase agreement, which she says she sent to him that day.

Debtor states she again contacted Applicant on May 22, 2020 about the status of the motion to sell, and states that Applicant told her that he had not submitted it as of that time. Debtor disputes that Applicant communicated numerous times with Debtor's real estate agent and the escrow officer.

Debtor disputes that Applicant was required to perform the legal services on a rush basis during a seven day period.

Debtor then complains about Applicant responsiveness during this case and delays in getting her address change filed with the court when she moved to Nevada.^{FN. 2}

 FN. 2. A Notice of Address Change was filed on June 23, 2020. Dckt. 80. The Order granting the Motion to Sell was entered on June 4, 2020. Dckt. 79.

Debtor concludes, asserting that Applicant never told her there would be any additional compensation above the \$4,000.00 fixed fee, but states that she requests that the court allow only \$1,000.00 of additional fees (which she computes to be an \$100 an hour rate).

The Debtor's *pro se* opposition is in letter form and is not a declaration providing the statements under penalty of perjury.

FEES ALLOWED

As with an unfortunately greater number of situations than anyone would like, there is friction over the reasonableness of fees that an attorney bills a client (whether a consumer or a business client). Under Local Bankruptcy Rule 2016-1 and the Rights and Responsibilities Statement filed by the Debtor and Applicant, the scope of the services included in the \$4,000.00 fixed fee are stated. Those fixed fees do not include compensation for additional services provided, such as to sell property, unless it was included as part of the plan for which the fixed fees were allowed. That is not the case here.

Applicant had two separate motions to prepare. The first is the Motion to Sell. The second was the Motion to Authorize the Employment of a Real Estate Agent. If the second was not filed and the order obtained, then the real estate agent could not be compensated for the services provided.

Applicant provides a detailed time and charges statement for the compensation sought for the additional work. Exhibit C, Dckt. 85 at 9-10. Applicant's records are consistent with Debtor's opposition, the first communication with Debtor was May 8, 2020, and the work on the Motion started two weeks later on May 22, 2020. *Id.*

An added twist to the Motion is that the sale provided sufficient monies to accelerate completion of the Plan. Applicant's fees include an hour, \$335.00, for reviewing the payment history and computing the balances owed creditors who timely filed claims.

In reviewing the time line, even if Applicant had rushed to get the Motion out by May 12th or 13th (May 8, 2020 date when this was first communicated with Applicant being a Friday), it would have been necessary for Applicant to get an order shortening time to have the hearings conducted on June 2, 2020, because Federal Rule of Bankruptcy Procedure 2002(a) requires twenty-one days notice of the hearing for a motion to sell property, unless the court for cause shortens that time period.

The hearings on the Motion to Sell and Motion to Employ were conducted on June 2, 2020. In looking at Applicant's billing statement, there are no fees charged the Debtor for attending the hearings on the Motion to Sell and Motion to Employ.

What the court notes in reviewing the billing statement is that there are numerous emails between Applicant and the Debtor, and Applicant and the Trustee. From May 26, 2020, a mere week before the June 2, 2020 hearing and in the several days thereafter, there are approximate 3.75 hours billed for such emails.

Though the Debtor asserts that Applicant seeks compensation for "numerous calls from my Agent, and the Escrow Officer. . .[which] is not true as [Applicant] sent all requested information to me and I supplied it to my Agent and/or the Escrow Officer." Opposition, p. 2; Dckt. 89. Reviewing the billing

statement, the court does not identify any charges for communications with the Escrow Officer or Debtor's Real Estate Agent. They are all for communications with the Debtor, with the exception of a May 22, 2020 phone call with Debtor and agent to review. The fees for this are only .25 hours.

The unique facts surrounding the case, including correspondence with Client, applications to shorten time, preparing a Motion to Sell on shortened time, preparing a Motion to Employ on shortened time, and preparing declarations and exhibits for the motions, raise substantial and unanticipated work for the benefit of the Estate, Debtor, and parties in interest. The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided.

However, the court makes one adjustment to the fees - the 1 hours spent doing a review of payment history of all creditors and preparation of a summary of claims filed, balances, owed by all creditors filing timely claims. It is unclear why Applicant prepared this when the Chapter 13 Trustee, who is being paid a commission to keep track of this information, was not requested to provide a statement showing the computation of the remaining amounts due to be paid under the plan in light of Debtor electing to sell the Property. The court reduces the fees by \$335.00 for that one hour of work.

Applicant has already given the Debtor a reduction in fees, having elected not to bill her for the hearing on the Motion to Sell and the Motion to Employ.

The court does not make adjustments for the numerous email communications between Debtor and Applicant during the period of May 22, 2020 and June 7, 2020, as they appear to be a two-way street during the heart of getting the Motions filed and prosecuted.

Fees

The request for additional fees in the amount of \$4,207.60 is approved pursuant to 11 U.S.C. § 330, the court having reduced the requested amount by \$335.00, and authorized to be paid by David Cusick ("the Chapter 13 Trustee") from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

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

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

Fees	\$4,207.60
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pursuant to this Application as final fees pursuant to 11 U.S.C. § 330 in this case, the court not allowing \$335.00 of the fees requested.

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 Marc. A.

Carpenter (“Applicant”), Attorney, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Marc. A. Carpenter is allowed the following fees and expenses as a professional of the Estate:

Marc. A. Carpenter, Professional Employed by Monica Steinhart (“Debtor”)

Fees in the amount of \$4,207.60,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330, the court having not allowed \$335.00 of the fees requested, as counsel for Debtor.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 5, 2020. By the court's calculation, 46 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.
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The debtors, James Spivy and Marlaina Blanche Schroeder-Spivy ("Debtor"), seek confirmation of the Amended Plan. The Amended Plan provides for:

- A. monthly payments in the amount of \$3,084.00 for two months,
- B. monthly payments in the amount of \$1,500.00 for two months,
- C. monthly payments in the amount of \$2,734.50 for 56 months,
- D. and a 100 percent dividend to unsecured claims totaling \$70,802.54.

Amended Plan, Dckt. 20. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on June 30, 2020. Dckt. 29. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor may not be able to make Plan payments.
- B. Debtor have failed to provide business documents.
- C. Debtor have failed to pay taxes.
- D. Debtor's attachment to Schedule I for their business is insufficient.

DISCUSSION

Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtors list income in the amount of \$8,433.00 per month from employment as a teacher and business income of \$7,625.00 per month without any business expenses listed.

Debtors have not filed supplemental Schedules I and J. Furthermore, Debtors represent \$3,605.00 of priority claims owed and a tax withholding of \$14,436.00 per year. Trustee found through copies of Debtors' 2018 and 2019 tax returns Debtor's tax burdens for those years were in the amounts of \$15,907.00 and \$18,746.00 respectively. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Failure to File Documents Related to Business

Debtors have failed to timely provide Trustee with business documents including:

- A. Questionnaire,
- B. Two years of tax returns,
- C. Six months of profit and loss statements,
- D. Six months of bank account statements, and
- E. Proof of license and insurance or written statement that no such documentation exists.

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

Failure to File Business Documents Required by Schedule I

Debtor has filed a statement of gross business income and expenses attached to Schedule I. Line 8a of Schedule I requires Debtor to "[a]ttach a statement for each property and business showing gross receipts, ordinary and necessary business expenses, and the total monthly net income." Debtor is required to submit that statement and cooperate with Trustee. 11 U.S.C. § 521(a)(3). Debtor has not provided an attachment that is sufficient to allow Trustee to assess the feasibility of the Plan.

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

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, James Spivy and Marlaina Blanche Schroeder-Spivy (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 15, 2020. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion to Sell Property is granted.

The Bankruptcy Code permits Larry Bellani, Chapter 13 Debtor, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the real property commonly known as 130 Spinnaker Court, Vacaville, California ("Property").

Response of U.S. Bank Trust National Association

Creditor U.S. Bank Trust National Association, as Trustee for ABS Loan Trust V, filed a Response indicating non-opposition on June 23, 2020, Dckt. 114. Creditor states the non-opposition is made on the reliance that their claim will be paid in full through escrow and Creditor will be able to submit an updated payoff demand to the applicable entity to deem the claim paid in full at the time the sale of the property is finalized.

Chapter 13 Trustee's Response

David Cusick, Chapter 13 Trustee ("Trustee") filed a Response indicating non-opposition on July 6, 2020, Dckt. 122. Trustee does not oppose the terms of the sale but "needs the [c]ourt to clarify how the arrears will be paid." Trustee requires sufficient funds to pay the arrears to Bank of America and Fidelity Bank as well as pay his own fees and expenses. Trustee further states he is not opposed to paying his check into escrow at the same time as his demand is met by the escrow company.

Trustee also states he does not oppose Debtor's exemption but notes it must be reinvested into a new home if Debtor wishes to keep those monies exempt.

Fidelity Bank's Non-Opposition

Creditor Fidelity Bank filed a Non-Opposition on July 7, 2020 on the basis that the sale provides for Creditor's lien to be paid in full. Dckt. 126.

Terms of the Sale

The proposed purchaser of the Property is Shenghai Lin, and the summarized terms of the sale are:

- A. The Purchase Price is in the amount of \$430,000.00.
- B. The sale is contingent upon court approval.
- C. Seller shall pay for a natural hazard zone disclosure report.
- D. Buyer shall pay for other reports Buyer deems necessary.
- E. Buyer shall pay the escrow fee and purchase owner's title insurance.
- F. Seller shall pay the County transfer tax or fee. Buyer waives the purchase of a home warranty plan.
- G. All stoves shall be conveyed with the Property.
- H. Buyer removes all contingencies save the Loan Contingency.

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: xxxxxxxxxxxxxxxxxx.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because Debtor will be able to fully repay the lienholders from the proceeds of the sale.

Movant has estimated that a 6.0% percent broker's commission to be split equally with Buyer and Seller's Broker, each taking 3.0% each from the sale of the Property, will equal approximately \$25,800. Mtn. to Employ, Dckt. 74. The amount of \$12,900.00 will be paid to Seller's Broker Bob Thunman/Coldwell Banker Kappel Gateway, and \$12,900.00 will be paid to Buyer's Broker Shea McGuire/McGuire Real Estate & Investment. *Id.* As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than 6.0 percent commission to Buyer and Seller's Broker to be divided equally among them, each receiving a 3.0 percent of the sale proceeds in commission.

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

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

The Motion to Sell Property filed by Larry Bellani, 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 Larry Bellani, Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Shenghai Lin or nominee (“Buyer”), the Property commonly known as 130 Spinnaker Court, Vacaville, California (“Property”), on the following terms:

- A. The Property shall be sold to Buyer for \$430,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit 2, Dckt. 97, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.
- C. The Chapter 13 Debtor is authorized to execute any and all documents reasonably necessary to effectuate the sale.
- D. The Chapter 13 Debtor is authorized to pay a real estate broker’s commission in an amount not more than 6.0 percent of the actual purchase price upon consummation of the sale split equally between Buyer and Seller’s Brokers. Three (3) percent commission shall be paid to the Chapter 13 Debtor’s broker, Bob Thunman/Coldwell Banker Kappel Gateway and three (3) percent shall be paid to Buyer’s Broker Shea McGuire/McGuire Real Estate & Investment.
- E. ~~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.~~

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 Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on June 15, 2020. By the court's calculation, 36 days' notice was provided. 28 days' notice is required. However, as discussed below, a creditor who may have an interest in the property is not identified in the Motion and not served.

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

<p>The Motion to Avoid Judicial Lien is Denied Without Prejudice.</p>
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This Motion requests an order avoiding the judicial lien of American Express ("Creditor") against property of the debtor, Larry Bellani ("Debtor") commonly known as 130 Spinnaker Court, Vacaville, Solano County, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$4,865.27. Proof of Claim 2-2. Debtor alleges that an abstract of judgment was recorded with the Solano County Recorder which encumbers the Property. Declaration, Dckt. 101.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$425,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$324,069.24 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$75,000.00 on Schedule C. Dckt. 1.

DISCUSSION

Abstract of Judgment Not Attached as Exhibit

The abstract of judgment was not filed as exhibit with this Motion, and neither the Motion nor

the Declaration state where it can be found. While in the Motion reference is made to an instrument number, it does not tie to anything in the record.

In the Debtor's Declaration, Debtor purports to testify from his personal knowledge (Fed. R. Evid. 601, 602) of the document number for the abstract of judgment in the Solano County Records Office. No testimony is provided as to how Debtor could have such personal information, or if he is merely saying what he heard the instrument number to be when he read it from the document (or merely saw the number in his Declaration prepared by his attorney, which he signed without even having any personal "heard it say" knowledge).

No information is provided as to the state court action in which the judgment has been entered.

Proof of Claim 2-1 and Amended Claim 2-2

Proof of Claim 2-1 is filed by Creditor American Express National Bank. The amount of the claim is stated to be \$4,490.79. It is stated that the claim is not secured. Credit card statements are attached, but no judgment or abstract of judgment are attached.

Amended Proof of Claim 2-2 was filed by Creditor American Express National Bank on July 7, 2020. The amount of the claim is increased to \$4,844.79. The Amended Proof of Claim states that Creditor has a judgment. Again, Proof of Claim 2-2 states that it is an unsecured claim. A copy of a judgment from the California Superior Court is attached Amended Proof of Claim 2-2.

Service of the Motion

The Motion and Supporting Pleadings have been served on the various persons:

American Express National Bank
c/o Becket and Lee LLP
PO Box 3001
Malvern, PA 19355-0701

Amex DSNB
PO Box 8218
Mason, OH 45040-8218

ARB REO Trust V Aldridge Pite, LLP
4375 Jutland Dr #200
PO Box 17933
San Diego, CA 92177-7921

Synchrony Bank
c/o PRA Receivables Management LLC
PO Box 41021
Norfolk, VA 23541-1021

The Office of the U.S. Trustee

Dckt. 102.

Here, the creditor whose interest in the Property at issue is an entity named “American Express.” Motion, Dckt. 99.

A search of the California Secretary of State webpage for identifying corporations and limited liability companies discloses that there are forty-six (46) corporations (some of which are suspended or dissolved) and four limited liability company (only one who is action) whose names start with the words “American Express.” ^{FN. 1}

A search of the FDIC website discloses that there are seven (7) FDIC insured banks whose names begin with “American Express.” ^{FN. 2}

FN. 1.

<https://businesssearch.sos.ca.gov/CBS/SearchResults?filing=&SearchType=LPLLC&SearchCriteria=american++express&SearchSubType=Keyword>

FN. 2

<https://research2.fdic.gov/bankfind/results.html?name=american+express&fdic=&address=&city=&state=&zip=&bankUrl=>

The creditor filing Amended Proof of Claim 2-2 is “American Express National Bank.” The information from the FDIC website for American Express National Bank is:

Headquarters: 115 West Towne Ridge Parkway
Sandy, UT 84070
Salt Lake County

Even if mislabeled as merely “American Express,” it was not served on American Express National Bank’s headquarters, and was not served by certified mail as required by Federal Rule of Bankruptcy Procedure 7004(h).

There not being an identifiable creditor party in the Motion against whom relief can be granted, the Motion is denied without prejudice.

Further, if the creditor on Proof of Claim No. 2-2 is the intended creditor, American Express National Bank has not been served.

Another issue that Debtor will need to address is that an order avoiding a judgment lien is conditional on the debtor completing the case. Thus, if the lien is “avoided,” then it is conditionally avoided and the proceeds will have to be held by the Trustee pending Debtor’s completion of the case. 11 U.S.C. § 349, which provided,

(b)Unless the court, for cause, orders otherwise, a dismissal of a case other than under

section 742 of this title—

(1)reinstates—

. . .

(B)any transfer avoided under section 522, 544, 545, 547, 548, 549, or 724(a) of this title, or preserved under section 510(c)(2), 522(i)(2), or 551 of this title

ISSUANCE OF A COURT-DRAFTED ORDER

A minute order substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Larry Bellani (“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 Avoid the Judicial Lien of American Express is denied without prejudice.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 15, 2020. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied without prejudice.

The debtor, Larry Bellani ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly payments of \$3,356.50 for 11 months, monthly payments of \$380.00 thereafter, and a 46 percent dividend to unsecured claims totaling \$22,233.00. Amended Plan, Dckt. 103. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on June 30, 2020. Dckt. 119. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor will not be able to make Plan payments because his Plan does not incorporate the sale.
- B. Debtor's Plan relies on a Motion to Avoid a Judicial Lien.

DEBTOR'S REPLY

Debtor filed a Reply on July 7, 2020, Dckt. 128. Debtor states the nonconforming section

regarding the Debtor's sale of property was inadvertently omitted. However, the terms of the arrearage being paid through escrow remained in Section 3.07 and had been on all previous Plans. Debtor concurrently served the Motion to Sell property and notes the Motion to Sell and Motion to Avoid Lien remain unopposed. Debtor is also prepared to amend the Plan to include the nonstandard provision but asks it be added in the order Confirming Plan in order to effectuate a faster closing of escrow.

DISCUSSION

Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor's Plan states the Class 1 arrearage dividend will be "0 through plan; payment in full in escrow upon sale of house" without further details of the amounts to be paid or how Trustee is to pay the arrears. Debtor's sale is not incorporated into the Plan under the Nonstandard Provisions. Trustee asserts that in order for the Class 1 arrears to be paid, the sale must provide a total of \$60,449.73.

Debtor has addressed Trustee concerns and suggests that the provision for payment of all secured claims, including arrears, to be paid through escrow and not through the plan be added in the Order confirming the Plan.

Debtor's Reliance on Motion to Avoid Lien

A review of Debtor's Plan shows that it relies on the court avoiding the lien held by American Express. Debtor has filed a Motion to Avoid the lien of American Express and set it for hearing on July 21, 2020, the same day as the instant Motion.

The court denied without prejudice Debtor's Motion to Avoid the Lien.

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

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

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

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

IT IS ORDERED that the Motion to Confirm the Amended Plan is denied without prejudice, and the proposed Plan is not confirmed.

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

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

Sufficient Notice **Not** Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on June 18, 2020. By the court's calculation, 33 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).

At the hearing, **xxxxxxxxxxxxxxxxxx**.

The Motion for Allowance of Professional Fees has **not** been properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Allowance of Professional Fees is xxxxxx.
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Chad M. Johnson, the Attorney ("Applicant") for Gemi and Julieta Bacani, the Chapter 13 Debtor ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

There is a retainer agreement between Client and Applicant dated January 24, 2020, which sets an hourly fee rate of \$400.00. Exhibit A, Dckt. 17. The court approved the method of compensation pursuant to the order confirming the Plan on March 18, 2020. Dckt. 13.

Fees are requested for the period July 19, 2019, through March 5, 2020. Applicant requests fees in the amount of \$3,419.00 and costs in the amount of \$355.00.

Chapter 13 Trustee's Non-Opposition

The Chapter 13 Trustee David Cusick ("Trustee") filed a Non-Opposition on June 23, 2020, Dckt. 19.

INSUFFICIENT NOTICE OF MOTION

Applicant provided 33 days' notice of this Motion. Federal Rule of Bankruptcy Procedure 2002(a)(6) requires a minimum of twenty-one days' notice of the hearing, and Local Bankruptcy Rule 9014-1(f)(1)(B) requires an additional fourteen days for parties to file written opposition. Those time periods do not run concurrently. Those two minimums total thirty-five days. Applicant has provided 2 fewer days than the minimum. Therefore, the Motion is denied without prejudice.

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

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

The Motion for Allowance of Fees and Expenses filed by Chad M. Johnson ("Applicant"), Attorney for Gemi and Julieta Bacani, Chapter 13 Debtor, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is **xxxxxx**.

THE COURT HAS PREPARED THE FOLLOWING ALTERNATIVE RULING IF APPLICANT PROVIDES SUFFICIENT NOTICE.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or

task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

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

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

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. 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 10.5 hours in this category. Applicant reviewed documents, prepared the plan, communicated extensively with client, prepared and sent documents to Trustee, and prepared client for and attended Trustee meeting.

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
Patricia Hadfield	5.0	\$400.00	\$2,000.00
Tina Perez	2.9	\$185.00	\$536.50
Chad M. Johnson	2.1	\$400.00	\$840.00
Jennifer Walden	0.5	\$85.00	\$42.50
	0	\$0.00	<u>\$0.00</u>
Total Fees for Period of Application			\$3,419.00

The Application uses both \$3,409.00 as well as \$3,419.00 as the total fees. A careful review of the task billing shows that the correct amount is \$3,419.00. The court's analysis reflects this amount.

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$355.00 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Credit Report Fee		\$45.00
Court Filing Fee		\$310.00
		\$0.00
Total Costs Requested in Application		\$355.00

FEES AND COSTS & EXPENSES ALLOWED

Fees

Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$3,419.00 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 under the confirmed Plan.

Costs & Expenses

First and Final Costs in the amount of \$355.00 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 under the confirmed Plan.

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

Fees	\$3,419.00
Costs and Expenses	\$355.00

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 Chad M. Johnson (“Applicant”), Attorney for Gemie and Julieta Bacani, the Chapter 13 Debtor, (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Chad M. Johnson is allowed the following fees and expenses as a professional of the Estate:

Chad M. Johnson, Professional employed by the Chapter 13 Trustee

Fees in the amount of \$3,419.00
Expenses in the amount of \$355.00,

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

IT IS FURTHER ORDERED that the Chapter 13 Trustee is authorized to pay 100% of the fees and 100% of the costs allowed by this Order from the available

Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

10. [19-27175](#)-E-13 **ADAM/SHERRI NEWLAND** **CONTINUED OBJECTION TO CLAIM**
[PGM-1](#) **Peter G. Macaluso** **OF DEUTSCHE BANK NATIONAL**
 TRUST COMPANY, CLAIM NUMBER 4
 3-30-20 [27]

Local Rule 3007-1 Objection to Claim—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on March 30, 2020. By the court’s calculation, 64 days’ notice was provided. 44 days’ notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days’ notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days’ notice for written opposition).

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

The Objection to Proof of Claim Number 4 of Deutsche Bank National Trust Company is xxxxx.

Adam Scott Newland and Sherri Ann Newland, Chapter 13 Debtor, (“Objector”) requests that the court disallow the claim of Deutsche Bank National Trust Company (“Creditor”), Proof of Claim No. 4 (“Claim”), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of \$37,801.02.

Objector asserts that the claim defective on the basis that the proof of claim is in excess of the correct amount of arrears. Debtor seeks correction of the Proof of Claim to \$20,594.58. Moreover, Objector argues that the attachment to the Proof of Claim lacks the necessary information required to support the secured claim in the amount demanded.

Final Cure and Prior Case

Objector states that in the prior Chapter 13 case, 13-31616, Objector completed the prior case and there was a final cure of Creditor’s arrearage at that time as provided in Federal Rule of Bankruptcy Procedure 3002.1. Objection, p. 2, § I; Dckt. 27.

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.

Debtor argues that Creditor lists the incorrect amount of \$37,801.02 on the basis that on Debtor's previous case (Case No. #13-31616), Creditor determined that the account had a post-petition balance due of \$10,440.66, through October 1, 2018. Debtors received a discharge on that case. Thus, by failing to account for that determination, Creditor fails to start the accounting on that date which increases the amount of arrears to \$37,801.02.

Creditor Response

On May 19, 2020, Creditor filed a Response to Debtor's Objection. Dckt. 31. Creditor argues that after reviewing the claim objection, Creditor filed an Amended Proof of Claim which provides for a total claim amount of \$694,139.98, including \$23,940.56. Creditor's counsel has attempted to communicate with Debtor's Counsel but has been unable to reach him.

Debtor's Response

Debtor filed a Response and argues that the Amended Proof of Claim filed is also defective and invalid because the claim incorrectly increases the arrears to \$23,940.56 without taking into account the previously payment made of \$13,839.96, which increases the monthly escrow and total monthly payment from the original proof of claim. Thus, Creditor fails to decrease the arrears or delete the projected escrow shortage which is paid monthly in the increased escrow from \$883.22 to \$903.45 in the amended proof of claim.

Continuance of June 2, 2020 Hearing

At the hearing Counsel for Debtor suggested to the court that a method for resolving the \$23,940.56 arrearage asserted by Creditor and the \$20,594.58 asserted by Debtor would be by conducting an evidentiary hearing.

June 9, 2020 Hearing

At the June 9, 2020 Hearing, the Parties identified the following factual issues for which an evidentiary hearing was necessary and the legal issues outstanding.

At the July 21, 2020 Hearing, xxxxxxxxxx.

11. [20-22540-E-13](#) **RAKESHNI SHARMA**
[ETW-2](#)

**CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY USRE
TRUST
6-15-20 [39]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and Chapter 13 Trustee on June 15, 2020. By the court's calculation, 36 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>

USRE Trust ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Debtor fails to provide full payment of Creditor's claim.
- B. Plan is infeasible.

DISCUSSION

Creditor's objections are well-taken.

Infeasible Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Creditor argues the Plan is Infeasible because the Plan does not provide for full payment of Creditor's claim but stating that adequate protections will be made while Debtor initiates legal action against Creditor for alleged violations of the Dodd-Frank Act. Creditor denies these allegations which were also referenced in a Motion for Relief from the Automatic Stay.

Moreover, Creditor argues that Debtor will not be able to make Plan payments because Debtor would be required to pay at least \$6,000.00 per month to either Trustee or Creditor, and Debtor's Schedules shows that Debtor does not have sufficient income to make such a payment.

A review of Debtor's Schedule I show that Debtor has a total gross monthly income of \$11,067.33, with a net income of \$8,427.87. Dckt. 21. Debtor's Schedule J calculates other expenses at \$4,927.87. *Id.* Thus, disposable income available to fund the Plan and mortgage payments is \$3,500.00.

At the hearing, xxxxxxxxxxxxxx.

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

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

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

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

The Objection to the Chapter 13 Plan filed by USRE Trust ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

FINAL RULINGS

12. [20-21666-E-13](#) **KHALED ALZIQ AND NIDA** **MOTION TO CONFIRM PLAN**
[MAC-1](#) **ALNAJJAR** **6-4-20 [24]**
Marc A. Carpenter

Final Ruling: No appearance at the July 21, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 4, 2020. By the court's calculation, 47 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Khaled Alziq and Nida Alnajjar ("Debtor") has provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response indicating non-opposition on June 16, 2020. Dckt. 33. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by The debtor,

Khaled Alziq and Nida Alnajjar (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor’s Amended Chapter 13 Plan filed on June 4, 2020 is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.