UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

August 28, 2018, 3:00 p.m.

1.	**18-22764-E-13** **SDB-1**	**SCOTT DESPER** **Scott de Bie**	**MOTION TO MODIFY PLAN** **7-20-18 [17]**

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

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 the Chapter 13 Trustee, creditors, and Office of the United States Trustee on July 20, 2018. By the court's calculation, 39 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is Granted.

Scott Desper ("Debtor") seeks confirmation of the Modified Plan because his income has not been as high as anticipated under the original Plan. Dckt. 20. The Modified Plan seeks to reduce plan payments by $290.00, from $1,660.00 to $1,370.00. Dckt. 22. Debtor notes that because no unsecured creditors filed

claims in his case, he is able to maintain full payments to all creditors even with the reduction in plan payments. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee ("Trustee"), filed an Opposition on August 10, 2018. Dckt. 24. Trustee indicates uncertainty of what the arrearage dividend for Class 1 claims is. The Modified Plan proposes payment of $137.00, but the additional provisions under Section 7.02 indicate an increase to $237.00 beginning month 16. The current Plan provides for a payment of $135.00. Trustee does not oppose clarifying this issue in the Order Confirming Plan.

DEBTOR'S REPLY

Debtor filed a Reply to Trustee's Opposition on August 16, 2018. Dckt. 27. Debtor proposes the following clarifying language be incorporated in the plan confirmation order:

> "No funds disbursed by the Trustee through July 31, 2018 shall be recovered. The monthly dividend to the Class One claim of Wells Fargo Bank shall be $137.00 per month beginning in August 2018 and continuing through March 2019. Beginning April 2019, the distribution to this Class One claim shall be $237.00 per month."

The Trustee's Opposition having been addressed, the Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by Scot Desper ("Debtor, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on July 20, 2018, is confirmed. Debtor's Counsel shall prepare an appropriate order with the above reference clarifying language confirming the Chapter 13 Plan, transmit the proposed order to David Cusick ("the Chapter 13 Trustee") for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

2. **18-24856-E-13 PGM-1** | **EVANGELINA CLARIZA** **Peter Macaluso** | **MOTION TO EXTEND AUTOMATIC STAY** **8-14-18 [14]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor , Chapter 13 Trustee, and Office of the United States Trustee on August 14, 2018. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion to Extend the Automatic Stay is granted.

Evangelina Gerales Clariza ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 18-24354) was dismissed on July 23, 2018, after Debtor failed to timely file documents. *See* Order, Bankr. E.D. Cal. No.18-24354 , Dckt. 10, July 23, 2018. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because, she could not find a bankruptcy attorney in time. Dckt. 17., ¶ 1. Debtor initially filed her case to stop a sale pending the same day. *Id.* Debtor is filing this Case due to financial hardship. *Id.*, ¶ 2. Debtor's circumstances have changed in that she has already hired an attorney and filed all documents. *Id.*, ¶ 3, 5. Debtor has not acquired new debt since her last filing. *Id.*, ¶ 4. Debtor seeks a stay so that she may reorganize her debts, keep her home, and pay her Internal Revenue Service and student loan claims.

Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response to Debtor's Motion on August 16, 2018. Dckt. 21. Trustee does not oppose the Motion, but notes a Business Statement must be included in Schedules I and J given Debtor's rental income.

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

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

A. Why was the previous plan filed?

B. What has changed so that the present plan is likely to succeed?

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

Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay. Debtor's previous case was dismissed for failure to timely file documents, which she notes was due to delay in hiring counsel. *See* Order, Bankr. E.D. Cal. No.18-24354 , Dckt. 10, July 23, 2018. In Debtor's present case, she has already hired counsel and all documents but a Business Statement. Dckt. 17., ¶ 3,5. 10 years prior to this case, Debtor jointly filed a Chapter 7 case (08-25904) and achieved a discharge. *See* Order, Bankr. E.D. Cal. No.08-25904 , Dckt. 33, August 19, 2008. Debtor has shown she has filed her present case in good faith.

The Motion is granted, and the automatic stay is extended for all purposes and parties, unless terminated by operation of law or further order of this court.

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 Extend the Automatic Stay filed by Evangelina G. Clariza ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

3.	**14-28968-E-13** **EJS-3**	**KATHERINE PONGRATZ** **Eric Schwab**	**MOTION TO MODIFY PLAN** **7-10-18 [82]**

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

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 the Chapter 13 Trustee, creditors, and Office of the United States Trustee on July 10, 2018. By the court's calculation, 49 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is Granted.

Katherine Pongratz ("Debtor") seeks confirmation of the Modified Plan the following changes in circumstances have occurred since confirmation of her prior Plan: claims by unsecured creditors have increased from $14,796.00 to $22,211.00, Debtor has incurred $4,750.00 in unexpected repairs to her home, and Debtor has increased her gross income from $6,048.00 to $6,605.00 and ancillary income from $367.00 to $504.00. Dckt. 82. The Modified Plan would increase plan payments from $2,195.00 to $2,810.00 from July 2018 through September 2019. Dckt. 86. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on August 9, 2018. Dckt. 95.

The Chapter 13 Trustee asserts that Debtor is $615.00 delinquent in plan payments, which represents the increase between current plan payments of $2,195.00 and the proposed modified plan payment of $2,810.00 for the payment due in July, paid on July 9, 2018. Before the hearing, another plan payment will be due. Trustee believes Debtor, using the TFS system to process payments to the Trustee, may not have had time to alter the transfer to reflect the new payment owing under the Modified Plan.

Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6). However, it appears that a technical error, or otherwise the timing of filing for the Modified Plan, prevented Debtor from making the full payment amount under her Modified Plan. Debtor's Plan reflects increases to income. Dckt. 84. The court anticipates Debtor will notify the court during this hearing that Debtor has cured the deficiency in payment is current under the Modified Plan. Therefore, the Plan appears feasible and the Modified Plan is confirmed.

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

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

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

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

IT IS ORDERED that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on July 10, 2018, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick ("the Chapter 13 Trustee") for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

4. **15-20709-E-13 LBG–3** | **TIMOTHY/MARY SULLIVAN** | **Lucas Garcia** | **MOTION TO DETERMINE FINAL CURE AND MORTGAGE PAYMENT RULE 3002.1** **8-7-18 [58]**

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)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor, Chapter 13 Trustee, and Office of the United States Trustee on August, 2018. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

The Motion to Determine Final Cure and Mortgage Payment is granted, with the court determining that upon completion of the Plan all arrearages on Creditor's claim was cured and payments on the obligation were current as of the end of the Plan, June 1, 2018 (the final payment having been disbursed to Creditor on September 29, 2017 by the Chapter 13 Trustee).

Timothy Joseph Sullivan and Mary Jean Sullivan ("Debtors") move this court to determine the final cure and payment on a mortgage pursuant to Federal Rule of Bankruptcy Procedure 3002.1(h). On August 9, 2018, David Cusick, the Chapter 13 Trustee ("Trustee"), filed Trustee's Final Report and Account of the administration and estate. Dckt. 62. Debtor states that Seterus, Inc., holder of a mortgage on Debtors' primary residence ("Creditor"), has disputed the amount paid under the Confirmed Plan and believes Debtors still owe $4,947.45 in post-petition arrearages. Dckt. 58. Debtors request a determination of the arrearages due at filing, and a review of amounts paid by Trustee towards that amount.

Creditor has not filed any responsive pleadings to this Motion. Creditor's Proof of Claim, 4-1, provides that $13,170.74 is necessary to cure the pre-petition arrearages owing.

Trustee filed a response on August 10, 2018. Dckt. 64. Trustee first notes that he has not acted in accordance with notice provisions of Federal Rule of Bankruptcy Procedure 3002.1 because that notice

provision ceases to apply after an order terminating the automatic stay. Trustee states further that he has paid $60,284.62 in payments on Creditor's mortgage and $13,170.74 in payments on pre-petition arrears.

DISCUSSION

Creditor has stated the amount of arrears Debtor needed to pay to become current was $13,170.74. Proof of Claim No. 4-1, at 5. The Trustee has paid this amount under Debtors' Plan. Dckt. 66.

Creditor has not presented any evidence that its claim has not actually been cured. No opposition having been presented and it appearing from the evidence provided, the Motion is granted.

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

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

The Motion to Determine Final Cure and Mortgage Payment filed by Curtis Heigher ("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 Determine Final Cure Payment is granted, with the court determining that upon completion of the Plan all arrearages on Creditor's claim was cured and payments on the obligation were current as of the end of the Plan, June 1, 2017 (the final payment having been disbursed to Creditor on September 29, 2017 by the Chapter 13 Trustee).

5.	**18-20734-E-13** **MRL-2**	**SHAUNA ROBERTS** **Mikalah Liviakis**	**MOTION TO CONFIRM PLAN** **7-3-18 [34]**

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 the Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 3, 2018. By the court's calculation, 56 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

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

Shauna Roberts ("Debtor") seeks confirmation of the Second Amended Plan in this case. In the Motion, Debtor asserts that Debtor is proposing a 100% unsecured dividend plan. Motion, Dckt. 34. The proposed Second Amended Plan proposes plan payments of $2,650.00 a month for the first twenty (20) months of the Plan, then stepping up to $5,970.00 for the remaining forty (40) months of the Plan. Debtor asserts that beginning in the twenty-first (21st) month due to Debtor's expenses decreasing $1,800 for car payments and $1,450 for college expenses for Debtor's child. Dckt. 34. It is further asserted that if liquidated in a Chapter 7, there would be a 100 % dividend for creditors holding general unsecured claims.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on August 7, 2018. Dckt. 39. Trustee argues that his prior objections (Dckt. 17 and 29.) Have not been addressed, including:

1. Debtor's Plan lists 3 vehicle payments paid directly by Debtor in the amounts of $820.00, $219.00, and $780.00 monthly. Debtor has not listed these debts in Schedule D and

it is unclear if these debts will mature prior to completion of the plan. Trustee believes if the vehicle values as listed on Schedule A/B correlate to the amounts owed, Debtor may be able to pay an additional $30,000.00 to complete the Plan 60 months sooner.

2. Debtor's Schedule I reflects that the Debtor owns a business named "Shauna Roberts Family Marriage Therapist." Debtor lists net income of $8,100.00, but has not provided the required statements showing business gross receipts, business expenses, and total net monthly income. Trustee cannot determine whether business expenses are paid off, and therefore Debtor may not be able to make plan payments.

3. Debtor lists Safe Credit Union checking and savings accounts on Schedule B valued at $5,500.00. However, Debtor's counsel indicated in an email (Exhibit A, Dckt. 20) that Debtor does not have such an account.

DEBTOR'S REPLY

Debtor filed a Reply to Trustee's Opposition on August 15, 2018. Dckt. 43. Debtor states that Debtor is amending her Schedules B and C to reflect the correct bank account name, Chase Bank. Dckt. 44, ¶ 8.

Debtor also states she will provide the Business Income and Expense form to supplement documents already provided to Trustee. *Id.*, ¶ 7.

As to the 3 vehicles, Debtor states that they are owed separately by Debtor's nonfiling spouse, that Debtor lists them as an expense because she lists her husband's income, and the Ford, Jeep, and Volkswagen vehicles will be paid off in April 2019, July 2024, and May 2021, respectively. *Id.*, ¶¶ 5-6.

DISCUSSION

On Amended Schedule A/B Debtor lists three vehicles for which she is the sole owner. Dckt. 46 at 2. These same vehicles were listed on original Schedule A/B. Dckt. 1 at 10. As noted by the Trustee, Debtor does not list the creditors having liens on Debtor's three vehicles. Schedule D, Dckt. 1 at 19.

As defined by Congress in 11 U.S.C. § 506(a)(1) [emphasis added], a secured claim is:

> (a) (1) An allowed **claim of a creditor secured by a lien on property in which the estate has an interest**, . . ., is a **secured claim to the extent of the value of such creditor's interest** in the estate's interest **in such property**,..., and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim....

Debtor owns the three vehicles which secure obligations owed to three unidentified creditors. In her Declaration in support of the present Motion, Debtor states that it is her husband who "is completing payments on **his** car loans." Declaration ¶ 7, Dckt. 36 (emphasis added). While stated as "his" car loans, Debtor is the owner of the three vehicles.

Here, there are purported creditors being paid outside of the bankruptcy plan, owed obligations that are secured by vehicles of the bankruptcy estate – thus, there are creditors with secured claims that need to be provided for in this case. No provision is made in either Class 4, providing for secured claims for which

there are no defaults to be paid directly by the Debtor or an Additional Provision, or Section 7 of the Plan for nonstandard treatment of these secured claims.

Debtor and non-debtor Spouse have significant income. They also report having extraordinary expenses. It may well be that availing themselves of Chapter 13 relief can provide Debtor and non-debtor Spouse to restructure their obligations, pay all of their debts in full, and have a fresh start for themselves and their children.

But, Debtor has left a substantial hole in the case and her plan. Then, in her Declaration in response to the Trustee, Debtor testifies that she and her husband "maintain separate finances" (but does not explain what she means by that or for how long such "separate finances" have been maintained); that she has not included any vehicles on Schedule B (which is inaccurate, as three vehicles are listed on both original Schedule A/B and Amended Schedules A/B); and that the non-debtor Spouse owns "several vehicles" and is liable on "several car loans." Declaration ¶ 5, Dckt. 48.

In looking at original Schedule A/B and Amended Schedule A/B, Debtor states that she owns a single family home on Pekolee Drive, a fee simple interest, and she is the only owner of the property. Dckt. 1 at 9 and Dckt. 46 at 1. Debtor lists the property as having a value of $475,000.00 but adds that the current value of the interest she owns (stating that she is the sole owner of the property) is only $237,500.00 (one-half the value of the property). In her Declaration in support of confirmation, Debtor testifies that she owns only a 50% interest in the Pekolee Drive Property. Declaration ¶ 4, Dckt. 36.

The court also notes that Debtor does not list any creditor on Schedule D that has a debt secured by property of the debtor. Dckt. 1 at 19. But on Schedule J Debtor lists there being a substantial monthly mortgage payment being made – which indicates that there is a creditor with a lien on the real property that Debtor states she owns (and is the sole owner of) on Schedule A/B.

There appear to be significant "inconsistencies" with Debtor's statements under penalty of perjury on the Schedules. It may be that Debtor and the non-debtor Spouse have jointly purchased the real property, have jointly borrowed money to purchase the property, and are both obligated on the note securing the purchase money loan. It may be that while Debtor and non-debtor spouse, in this community property state, believe that they each own separate interests (though Debtor states that she is the only owner of the property), such separate interests, rather than community property interests, have to be created in the manner provided by California law to overcome the community property presumption.

It appears that Debtor has intentionally omitted creditors, freezing them out of the bankruptcy case. Taken at face value, on Schedule D Debtor states that she has no creditors with secured claims, and on Schedule E/F Debtor states that she has no creditor with priority unsecured claims and $340,266.00 in nonpriority unsecured claims (almost half of which is one student loan).

First, Debtor does not get to have a "private" bankruptcy, where she can elect to disclose only the creditors she desires and hide the others from the court, Chapter 13 Trustee, and parties in interest.

Second, to pay the $340,266.00 over sixty months requires a monthly disbursement on that account of $5671.10, just for the unsecured debt. To compute the required plan payment the following must be paid:

Unsecured Claims.....$340,266
Debtor Attorney Fees.....$ 5,065

Chapter 13 Trustee Fees.....$ 27,627 (Est. 8% of Creditor/Atty Fees Disbursements)

Total Required to Fund Plan.....$372,958

Monthly Required Payment.....$6,215.97 (Total Divided Over 60 Equal Monthly Payments)

The proposed Plan, to pay a 100% dividend, is funded with 20 payments of $2,650.00 each (totaling $53,000.00) and 40 payments of $5,970.00 each (totaling $238,800.00). The proposed payments total only $291,800.00, which is less than 80% of the actual amount must be paid.

Debtor may be basing the amount on the proofs of claim filed, not the actual debts listed on Schedule E/F. Given that some secured claims have not been listed, the court is unsure whether all creditors with unsecured claims have been listed and adequate notice provided.

Using the lower amount of filed claims, ($205,420.27), the additional ($5,065.00) in Debtor's attorney's fees, and ($20,945.34) [est. at 8%], the total required to fund the plan is $282,762.11. The proposed plan would fund this lower amount.

Denial of Motion Without Prejudice

Debtor indicates that she will submit the Business Income and Expense form and update her Schedules B and C to reflect her actual bank account. Dckt. 44. However, it is unclear whether the court can rely on Debtor's stated intentions. Debtor has been on notice of these two issues since March 20, 2018, when Trustee first objected. Dckt. 17. Debtor has not provided an explanation for this 5-month delay. Debtor has failed to submit documents as required by 11 U.S.C. § 521(a)(3), and the court cannot accurately assess the feasibility of the plan under 11 U.S.C. § 1325(a)(6).

Debtor professes not to own vehicles which she lists on Schedule A/B and Amended Schedule A/B. Debtor list real property and states she is the sole owner of the fee simple interest, and then counter-testifies that she only has a one-half interest. On Schedule J Debtor lists payments for a mortgage and the cars, all of which are listed on Schedule A/B and Amended Schedule A/B, but does not list the secured claims on Schedule D.

The required information from Debtor is incomplete. Given Debtor's conflicting statements under penalty of perjury, it appears that in proceeding in this case under Chapter 13, Debtor and Debtor's counsel will have to provide a title report for the real property, DMV records for vehicles, bank account information, and other asset documentation for both the Debtor and the non-debtor Spouse, Debtor's conclusion of what may be hers and what may be his not sufficient (or credible).

The Debtor and Chapter 13 Trustee should both recognize that defaulting to induce a dismissal or voluntary dismissal with such substantial assets "floating around" and inconsistent statements under penalty of perjury is not an "easy option." Fortunately, the Debtor and her counsel have the opportunity to correct all of the information, and properly and adequately provide for secured claims (even if in the Additional Nonstandard Provisions).

The court denies the Motion without prejudice to allow for confirmation of a future plan with the same payment terms (but which properly accounts for the secured claims as defined in the Bankruptcy Code).

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

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

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

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

IT IS ORDERED that Motion to Confirm the Modified Plan is denied without prejudice, and the proposed Chapter 13 Plan is not confirmed.

6. **15-23635-E-13 DEF-3** **STANLEY/PATRICIA COVELL** **David Foyil** **MOTION TO MODIFY PLAN** **7-12-18 [64]**

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 July 11, 2018. By the court's calculation, 48 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

Stanley Covell and Patricia Covell ("Debtors") seeks confirmation of the Modified Plan because Debtors became delinquent after monthly cost of living and medical expenses increased. Dckt. 66. Furthermore, one of the co-debtor Stanley began receiving less social security income monthly because of over payment. *Id.* Debtors believe they will be able to make future payments as co-debtor Stanley found a new job. *Id.* The Modified Plan reduce Plan payments after month 33 from $195.00 to $100.00. Dckt. 67. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

The terms of the proposed Third Modified Plan provides for the following funding by Debtor and distributions to creditors:

Plan Term.....45 Months

Debtor Payments Into Plan

Months 1-9	$138	x 9 Months =	$1,242
Months 10-28	$250	x 19 Months =	$4,750
Months 29-33	$0.00	x 5 Months =	$ 0.00

Months 34-45.....$100 x 12 Months = $1,200

Total Plan Funding.....$7,192

Distributions

Chapter 13 Trustee Fees.....	($ 575.36)
Debtor's Attorney's Fees.....	($2,000.00)
Class 1 Secured Claims.....	None
Class 2 Secured Claims.....	None
Class 3 Surrender.....	None
Class 4 Secured (non-default).....	None
Class 5 Priority Unsecured.....	None
Class 6 Special Treatment Unsecured..	None
Class 7 General Unsecured.....	($4,792) [58% Dividend for $8,261.80 secured claims]

Only one proof of claim has been filed, that for the general unsecured claim of the Internal Revenue Service. Second Amended Proof of Claim No. 1.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on August 10, 2018. Dckt. 70. Trustee opposes confirmation on the following grounds:

1. Debtors' Modified Plan proposes to reduce the commitment period from 60 months to 45 months without an explanation.

2. The terms of Debtors' Modified Plan would result in an overpayment of $175.00 to date. Trustee does not oppose clarifying that $6,667.00 and not $6,492.00 has been paid under the Plan terms in the order confirming.

3. Debtors improperly filed new Schedules I and J as "amended" and not "supplemental," thereby indicating that current expenses were expenses at the time of filing.

The Trustee's arguments are well-taken.

Debtor does not explain why there has been a reduction in the number of months under the Plan term where unsecured claim holders are receiving only 58% totaling $8,261.80. The Plan violates 11 U.S.C. § 1325(b)(4)(B) because the Plan will complete in less than the permitted sixty months without providing full payment of all allowed unsecured claims.

Debtor filed Schedules as "amended" rather than supplemental, indicating different expenses and income at the time of filing. This legal distinction affects the court's ability to determine a plan's feasibility under 11 U.S.C. § 1325(a)(6).

The Trustee also objects to Debtor shortening the time of the plan term from 60 months to the proposed 45 months. Neither the Trustee nor Debtor address whether a 60 month term was required in this case or the Debtor could have proposed a shorter term plan that was at least 36 months in duration.

Debtor's proposed Modified Plan would also result in the Debtors having overpaid $175.00, resulting in not all disposable income being put into the Plan. 11 U.S.C. § 1325(b)(1).

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

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by Stanley Covell and Patricia Covell ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

7. **18-23860-E-13 DPC-1** **MARIE GIESE** **Scott Sagaria** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 7-27-18 [15]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on July 20, 2018. By the court's calculation, 39 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Debtor is delinquent $347.00 in proposed plan payments to date, and the next scheduled payment is due on August 25, 2018.

B. Debtor proposes to pay $1,100.00 pre-petition in attorney's fees and $3,700.00 through her plan, totaling $4,800.00. This amount exceeds the maximum fee provided by Local Bankruptcy Rule 2016-1(c).

C. Debtor provides for a 2012 Ford Fusion in Class 2 of the proposed plan to be paid $12,769.00. However, Debtor indicated at the Meeting of Creditors the vehicle has already been repossessed.

D. Debtor lists Financial Freedom's reverse mortgage in Class 4 of the Plan, with a $0.00 monthly payment. Debtor admitted at the Meeting of Creditors held July 26, 2018 that she owed pre-petition arrears on the mortgage, which is not provided for in the proposed plan.

E. Debtor cannot make payments under 11 U.S.C. § 1325(a)(6). Debtor's budget is not sufficient for the maintenance and support of the Debtor and her dependent. Debtor has listed the following expenses on her Schedule J for her and her 55 year old daughter:

$135 Electricity, heat, gas.
$150Water, sewer, garbage
$125 Phone, internet, cable
$145 Food, housekeeping supplies
$40 Transportation
$134 Health insurance

The Chapter 13 Trustee's objections are well-taken.

The Chapter 13 Trustee asserts that Debtor is $347.00 delinquent in plan payments, having yet to make any payments under the proposed plan. Before the hearing, another plan payment will be due. According to the Chapter 13 Trustee, the Plan in § 2.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor proposes to pay $1,100.00 pre-petition in attorney's fees and $3,700.00 through her plan, totaling $4,800.00. Debtor does not appear to be engaged in business. Under Local Bankruptcy Rule 2016-1(c)(1), the maximum fee allowable in a Chapter 13 is $4,000.00 in a nonbusiness case and $6,000.00 in a business case. Debtor's Plan provides fees exceeding both types of cases. Here it appears Debtor has a nonbusiness case, and thus the attorney's fees provided are $800.00 more than permissible.

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor's expenses are unrealistic. Debtor budgets $145 monthly for food for two adults. This budget would leave just $2.41 per day for Debtor and her 55 year old daughter. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

The Financial Freedom holds a deed of trust secured by Debtor's residence in the amount of $299,367.84. Schedule D, Dckt. 1. Debtor admitted during the Meeting of Creditors that she owes pre-petition arrears on the mortgage. The Plan does not propose to cure those arrearages. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearages.

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

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

8. **14-25474-E-13 LBG-5** **LEE SCIOCCHETTI** **Lucas Garcia** **MOTION TO COMPEL** **8-7-18 [95]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee and creditors on August 7, 2018. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

The Motion to Compel Abandonment is Denied without prejudice.

After notice and a hearing, the court may order a trustee to abandon property of the Estate that is burdensome to the Estate or is of inconsequential value and benefit to the Estate. 11 U.S.C. § 554(b). Property in which the Estate has no equity is of inconsequential value and benefit. *Cf. Vu v. Kendall (In re Vu)*, 245 B.R. 644 (B.A.P. 9th Cir. 2000).

The Motion filed by Lee Alan Sciocchetti ("Debtor") requests the court to order David Cusick ("the Chapter 13 Trustee") to abandon $11,260.00 in funds (the "Property") achieved from the sale of a portion

of Debtor's interest in property commonly known as 7986 Hwy 20, Smartsville, California (the "Land"). The sale granted Caltrans a portion of the land for an easement of access.

Debtor has provided a Declaration to support this Motion. Dckt. 98. Debtor states he claimed an exemption totaling $56,000.00 on the Land. *Id.*, ¶ 3. Debtor owns the Land jointly with other owners, and does not believe there are any liens. *Id.*, ¶ 5. Debtor intends to use the Property towards improvements and repairs on the Land. *Id.*, ¶8.

TRUSTEE'S OPPOSITION

Trustee filed an opposition on August 13, 2018. Dckt. 100. Trustee states Trustee's counsel rejected Debtor's *ex parte* stipulation for the use of the Property "because of the reinvestment issue on July 24, 2018." Trustee also opposes the Motion because Debtor has not explained what improvements are intended, particularly where the Land is described on Schedule A as "Bare Land Property Except for an Unpermitted Attached Yeart."

DISCUSSION

In substance, this is not a true request for a trustee to abandon the bankruptcy estate's interests in property. See 11 U.S.C. § 554(b). At issue is $11,260.00 in proceeds from the sale of real property in which Debtor asserted an exemption pursuant to California Code of Civil Procedure § 704.730.

The abandonment provisions of 11 U.S.C. § 554(b) is premised on there being a bankruptcy estate holding property and the debtor or some other person entitled to such property, with the value to the estate being minimal or burdensome. See COLLIER ON BANKRUPTCY, SIXTEENTH EDITION, ¶ 554.02.

In the case now before the court, Debtor confirmed his Plan on November 11, 2014. The Plan (Dckt. 5) required $300 a month payments from the Debtor and provided for distributions of $285.00 for the claim secured by a camper, a 19% dividend to creditors holding general unsecured claims, $10,707.00 in Debtor's attorney's fees, and the Chapter 13 Trustee fees. Pursuant to Joint Ex Parte Motion the Plan was amended to increase the Plan payments to $325.00 for the last forty-one months of the Plan. Order, Dckt. 94. The Plan does not provide for Debtor to sell his interest in the undeveloped property.

On March 27, 2018, Debtor filed a Motion to Approve the sale of his interest in an easement over the Property to be purchased by California Department of Transportation. Dckt. 80. The Motion recites Debtor having claimed the homestead exemption in the property from which the easement interest was to be sold. The Motion was granted. Civil Minutes, Dckt. 87; Order, Dckt. 90.

Review of Homestead Exemption

Debtor has asserted the standard homestead exemption from enforcement of judgments under California law (not the special bankruptcy opt-out exemption). This, as debtors have learned, is a "conditional" exemption, which requires that if the property in which the exemption is sold, then the exemption goes to the proceeds, but only for a period of six months.

"§ 704.720. Exemption from sale; Exemption of sale proceeds or indemnification

> (b) If a homestead is sold under this division or is damaged or destroyed or is acquired for public use, **the proceeds of sale** or of insurance or other indemnification for damage or destruction of the homestead or the **proceeds received as compensation for a homestead acquired for public use** are exempt in the amount of the homestead exemption provided in Section 704.730. The proceeds **are exempt for a period of six months after the time the proceeds are actually received by the judgment debtor**, except that, if a homestead exemption is applied to other property of the judgment debtor or the judgment debtor's spouse during that period, the proceeds thereafter are not exempt."

Cal. C.C.P. § 704.720(b). Additionally, the homestead exemption is lost if the debtor claims an exemption in other property.

Proceeds at Issue

The property is not being abandoned from the bankruptcy estate, but the Debtor seeks to use the money, taking potentially non-exempt assets from creditors. Debtor's Plan provides that the property of the Debtor, which includes the property in which the homestead exemption is claimed, revested in the Debtor on confirmation. Plan ¶ 5.01, Dckt. 5. However, if the case is converted to one under Chapter 7, the Property in which the exemption is claimed, and the proceeds at issue, are property of the Chapter 7 bankruptcy estate. 11 U.S.C. § 348(f).

In substance, the issue presented is not that property should be "abandoned" from the bankruptcy estate, but whether there has been post-confirmation changes (here, the loss of an exemption) upon which the Chapter 13 Trustee or creditors could seek modification of the chapter 13 Plan pursuant to 11 U.S.C. § 1329.

As Debtor notes, the exemption was claimed and not objected to by the Chapter 13 Trustee or other party in interest. Upon Debtor completing his plan, obtaining his discharge, and proceeding with his fresh start, he can sell his homestead property, do whatever he wants with it, and his creditors in this case (and Chapter 13 Trustee) would have nothing to think about it.

But, Debtor in this Chapter 13 case does not have a discharge and his non-exempt assets can be called upon to pay his creditors. The court issued its order on May 1, 2018, approving the sale of the property by the Debtor which has generated the proceeds at issue. Debtor is still within the six month window to use the homestead exemption proceeds for his homestead exemption property. But the clock is ticking.

Here, Debtor states with particularity in the Motion (Fed. R. Bankr. P. 9013) the following exempt use of the monies:

> "[d]ebtor now wishes to obtain those funds for the purpose of re-investing in the homesteaded property. He and the other co-owners have repairs and improvements needed to the land. The other co-owners are pledging their portions of these funds and are expecting that the debtor as a co-owner and inhabitant will utilize his funds for this purpose as well."

Motion ¶ 7, Dckt. 95. No indication is made as to what is actually being done, how soon it will be done, and when Debtor will use the monies. Debtor's Declaration (Dckt. 98) provides no testimony as to what exempt purpose to which the proceeds will be utilized.

As requested, the court would be merely issuing an order for the Debtor to "take the money and run." Possibly there are real exempt purposes to which the money can be used to preserve the exemption. If the actual work, and payment therefore, would be outside the six month period, possibly the escrowing of the monies under a court order can preserve the exemption while the money is in the process of being used if it takes longer than six months.

Grounds have not been shown for an abandonment of the non-exempt property and rights that creditor may have to modify the Plan to have the non-exempt property used to pay creditors.

It appears that this nonspecificity has led to the Trustee's scepticism over letting Debtor take the money. Debtor and the co-owners can easily clarify the actual exemption uses for these monies, the timings of the payments, and other facts detailing the proposed use of the monies.

The court also notes that Debtor has completed fifty-one moths of his sixty month plan. While the six month period to use the proceeds for homestead exempt property expires before the May 2019 completion of the plan, it will be down to the last four or five months of the Plan. Clearly identifying the valid exemption purposes and actually using the money or have it properly escrowed could allow the Trustee to fulfill his duties, and the Bankruptcy Code be followed (clearly in spirit and substantively), while allowing Debtor to use the exempt money for his exempt property.

The Motion is denied without prejudice.

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

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

The Motion to Compel Abandonment filed by Lee Alan Sciocchetti("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 Compel Abandonment is denied without prejudice.

9. **18-23750-E-13** **LEE NEWTON** **OBJECTION TO CONFIRMATION OF**
DPC-1 **Joseph Sandbank** **PLAN BY DAVID P. CUSICK**
7-30-18 [22]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on July 30, 2018. By the court's calculation, 29 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Debtor has not made payments called for by the Plan under 11 U.S.C. § 1325(a)(2). Debtor is $1,700.00 delinquent in Plan payments to the Trustee to date and the next scheduled payment of $1,700.00 is due August 25, 2018. The Debtor has paid $0.00 into the plan to date.

B. Debtor cannot make payments or comply with the Plan. Debtor's Schedule I (Dckt. 11 at 24.) Lists $500.00 on line #8a. Debtor admitted at the Meeting of Creditors held July 26, 2018, this income was anticipated from renting a room in her residence. However, the income has yet to be received. Debtor also stated during the Meeting that although separate her spouse has been assisting her financially. However, Debtor has not listed this income on her Statement of Financial Affairs. Dckt. 11 at 29.

C. Debtor has failed to provide the Class 1 Checklist and Authorization to Release Information forms as required by Local Bankruptcy Rule 3015-1(b)(6).

D. Debtor's Plan proposes to pay interest on arrears to Wells Fargo Home Mortgage that may not be entitled to interest under 11 U.S. C. § 1322(e) unless the note provides for interest on late payments or applicable non-bankruptcy law requires it.

E. Plan fails to provide for U.S. Department of Housing and Urban Development's secured claim filed on June 20, 2018. Proof of Claim No. 1-2. While treatment of all secured claims may not be required under 11 U.S.C. § 1325(a)(5), failure to provide the treatment could indicate that Debtor cannot afford Plan payments because they have additional debts, or because treatment of the creditor is being concealed. Trustee believes the debt may be due on sale, but believes for confirmation the Debtor should disclose such.

F. Plan proposes payment of attorney's fees in excess of $4,000 permissible in non-business cases. Debtor's Plan provides $1,250.00 in pre-petition attorney's fees and $5,250.00 to be paid under the plan, totaling $6,500.00. While Schedule I shows a net business income of $500.00, this amount is otherwise unsupported. And Debtor stated during the Meeting of Creditors the income is only anticipated.

The Disclosure of Attorney Compensation (Dckt. 11 at 43.) And the Rights and Responsibilities (Dckt. 14.) Indicates $6,000.00 in attorney's fees have been charged and $1,250.00 paid. The Statement of Financial Affairs, Question 16, reflects $1,750.00 in fees and court costs were paid in this case. Trustee opposes attorney's fees in excess of $4,000.00 for a "no look" process absent proof of a business.

The Chapter 13 Trustee's objections are well-taken.

The Chapter 13 Trustee asserts that Debtor is $1,700.00 delinquent in plan payments, which represents one month of the $1,700.00 plan payment. Before the hearing, another plan payment will be due. According to the Chapter 13 Trustee, the Plan in § 2.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Debtor has not made any payments under th Plan. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor does not list any income from employment on the Statement of Financial Affairs. While Debtor's Schedule I lists $500.00 on line 8a, Debtor has admitted this income is merely anticipated. Debtor also has stated she receives income from her spouse, but has not actually listed any income. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Debtor has failed to provide the Class 1 Checklist and Authorization to Release Information forms, EDC 3-086 and EDC 3-087, respectively. Local Bankruptcy Rule 3015-1(b)(6) requires Debtor provide these forms to the Trustee no later than 14 days after the filing of the Petition.

Debtor's Plan proposes to pay interest on arrears to Wells Fargo Home Mortgage. However, Debtor has not shown evidence that the note held by Wells Fargo Home Mortgage provides for interest on late payments. The amount necessary to cure a default under a proposed plan must be in accordance with the underlying agreement and applicable non-bankruptcy law. 11 U.S.C. § 1322(e).

The U.S. Department of Housing and Urban Development filed a Proof of Claim (1-2) asserting a secured claim of $33,673.76 in this case. Neither Debtor's Plan nor their Schedule D provides for this claim. Trustee's concern is that failure to provide for this claim leaves to uncertainty as to Debtor's ability to pay under the Plan. Trustee is also concerned Debtor may not provide for the claim in order to conceal the proposed treatment of the creditor. The court agrees that without more information provided as to how Debtor plans to provide for this claim, the court cannot determine whether the Plan is feasible.

Debtor's Plan provides $1,250.00 in pre-petition attorney's fees and $5,250.00 to be paid under the plan, totaling $6,500.00. Debtor does not appear to be engaged in business, except for an anticipatory goal of renting. Under Local Bankruptcy Rule 2016-1(c)(1), the maximum fee allowable in a Chapter 13 is $4,000.00 in a nonbusiness case and $6,000.00 in a business case. Debtor's Plan provides fees exceeding both types of cases. Here it appears Debtor has a nonbusiness case, and thus the attorney's fees provided are $2,500.00 more than permissible.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, 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.

10. **14-20519-E-13 PGM-2** **STEVEN/DEBORAH MCCONNELL** **Peter Macaluso** **CONTINUED OBJECTION TO NOTICE OF MORTGAGE PAYMENT CHANGE** **6-13-18 [59]**

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 Creditor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on June 13, 2018. By the court's calculation, 48 days' notice was provided. 28 days' notice is required.

The Objection to Notice of Mortgage Payment Change 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. Upon review of the Objection and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance for the July 31, 2018 hearing.

The Objection to Notice of Mortgage Payment Change is overruled.

Steven McConnell and Deborah McConnell ("Debtor") object to a Notice of Mortgage Payment Change filed by HSBC USA, N.A., as Trustee for Structured Adjustable Rate Mortgage Loan TRUST Mortgage Pass-Through Certificates, Series 2004-14 ("Creditor") on May 1, 2018. Debtor argues that the projected escrow increase should be offset by a payment of $17,919.28 and should indicate an overage of $16,992.04.

JULY 31, 2018 HEARING

On July 19, 2018, the parties stipulated to this hearing being continued. Dckt. 73. The court granted the parties' request and continued the hearing to 3:00 p.m. on August 28, 2018. Dckt. 79. Creditor has been given until August 14, 2018, to file a response to the Objection, and Debtor has been given until August 21, 2018, to reply. *Id.* The hearing on the Objection was continued by prior order.

TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response to Debtor's Objection on July 17, 2018. Dckt. 70. Trustee's Response notes the following:

1. Debtor objects to the $927.24 required balance for escrow listed in attachments to the Notice of Mortgage Payment Change filed May 1, 2018, apparently on the basis that the Creditor issued a $17,919.28 refund to the Trustee of funds that the Trustee had disbursed to them, which the Trustee subsequently sent back to Creditor. Debtor wants to make certain Debtor receives proper credit for the funds disbursed.

2. HSBC Bank USA, N.A. as Trustee for Structured Adjustable Rate Mortgage Loan TRUST Mortgage Pass-Through Certificates, Series 2004-14 filed a secured claim for $233,047.13 with $8,023.30 necessary to cure any default as of the date of the petition. The ongoing mortgage payment per the Proof of Claim reflects a post-petition payment of $683.03 beginning February 1, 2014, and interest only payments until May 1, 2014, and a 30-year loan.

3. Trustee has paid $43,271.98 on the ongoing mortgage claim to date where the case was filed January 20, 2014 (53 payments coming due). Trustee's records reflect $4,538.49 principal due, with $6,294.72 paid in arrears to date. Trustee notes that the Notices of Payment Change increased payments from $700.00 under the Plan to $1,500.58 on May 12, 2017, to $1,512.83 on November 11, 2017, and then to $1,730.01 effective June 25, 2018.

4. The First Notice of Mortgage Payment Change was filed May 12, 2107, and effective June 1, 2017. The Change included principal payments, which the creditor had previously not charged in order to reduce payment amounts. Subsequent Notices of Change reflected increases in the interest from 3.625% to 3.75%, and then 3.75% to 4.75%. The Trustee overpaid the first mortgage payment by $16.97 per months for the first 40 months of the Plan, totaling $678.80.

5. On November 13, 2017, the Trustee posted a check from Creditor dated November 6, 2017, in the amount of $17,919.28 for an escrow surplus. Trustee informed creditor that the refund was likely error, and that the creditor may not be properly crediting the plan payments to either the mortgage, the pre-petition arrears, or both. Trustee sent the funds back to the creditor by check.

6. The Notice of Mortgage Payment Change does not give current balances on pre-petition arrears, the amount paid to principal, or the amount paid in interest. However, creditor provides amounts paid to escrow for June 2017 through May 2018, totaling $4,493.92, which would equate to $374.50 monthly. Trustee notes that this breakdown is clearly not correct.

7. Trustee does not object to the ongoing mortgage payment being lower. However, Trustee believes the principal balance should be higher and the ongoing payment

higher, given Trustee's estimate of $190,841.00 and creditor's Proof of Claim reflecting $233,047.13 owing in principal balance.

CREDITOR'S OPPOSITION TO OBJECTION

Creditor filed an Opposition to this Objection on August 14, 2018. Dckt. 82. Creditor argues the Objection should be overruled because the escrow payment is calculated based upon limits of payments to escrow accounts prescribed by the Real Estate Settlement and Procedures Act ("RESPA") under 12 C.F.R. § 1024.17(c)(ii) and there is no escrow shortage of $927.24 being collected by Creditor. Creditor asserts further that the $17,919.28 in escrow surplus could not be credited to the escrow account because the surplus was merely an error resulting from reliance on a loan modification that was never finalized. Creditor's arguments are summarized as follows:

1. The Debtors allege that the basis of the escrow payment increase from $189.53 to $309.08 was caused entirely by a projected escrow shortage of $927.24, which was incorrectly determined after the refund of the $17,919.04 in "escrow surplus" funds to the Creditor. The argument asserted by the Debtors is flawed because the only escrow shortage calculated on the escrow analysis attached in support of the May 1, 2018 NMPC was in the amount of $216.56 was already credited to the Debtors escrow account and there is no escrow shortage being collected. The only reference to an amount of $927.24 is in the required balance as of June 2018, which is only relevant for the calculation of escrow shortage that has already been credited rendering the account with no delinquencies. The $309.08 payment amount represents monthly sum charged to the Debtor for annual escrow disbursements that are reasonably anticipated by the Creditor to be paid through from the escrow account.

2. RESPA provides that the servicer of an escrow account may charge the borrower a monthly sum equal to one-twelfth (1/12) of the total annual escrow payments which the servicer reasonably anticipates paying from the account. 12 C.F.R. §1024.17(c)(ii). As the Creditor reasonably anticipates annual escrow disbursements of $2,914.96 for property taxes and $794.00 for hazard insurance premiums, the Creditor is entitled a monthly sum equal to one-twelfth (1/12) of the total anticipated disbursement amount of $3,708.96. One-twelfth (1/12) of $3,708.96 is $309.08, which means that the Creditor has calculated the monthly escrow payment in compliance with RESPA for the recovery of reasonably anticipated escrow disbursements to be made within the annual analysis period. Therefore, if the Debtors' Objection is sustained, the Creditor would not be entitled to receive full payments to cover the anticipated escrow disbursements of $3,708.96.

3 The $17,919.28 in escrow surplus funds were tendered accidentally to the Trustee on account of the Creditor attempting multiple times to credit the escrow account for the booking of an estimated escrow payment amount calculated during a loan modification review and was not a true escrow surplus. The $6,667.20 credit issued on October 25, 2016 was excessive because at the time of the credit only the September 1, 2016 and October 1, 2016 payments improperly reflected the $522.89 escrow payment calculated under the loan modification review. The total

credit due at that time was only $666.72, but the Creditor accidentally provided a credit of $6,667.20 for twenty (20) payments that came due from April 1, 2015 through November 1, 2016.

The additional credit of $2,666.88 provided on April 27, 2017 was both duplicative and excessive as it only covered a period that was not impacted by the accidental booking of the $522.89 escrow payment amount and overlapped with a period already covered in the $6,667.20 credit, April 1, 2015 through November 1, 2015. The application of this credit only served to artificially inflate the Debtors' escrow balance, which resulted in an actual escrow balance of $11,570.32 as of April 2017 instead of the projected balance of $786.68.

The last escrow credit of $10,667.52 issued on October 26, 2017 was also duplicative and excessive as it unnecessarily triple-credited the account for payments from April 1, 2015 through November 1, 2015 when the $522.89 was not even booked against the Debtors' account. Further, the credit doubled the credits for December 1, 2015 through November 1, 2016 as it over lapped with the $6,667.20 credit already applied for a period that only had three payments impacted by $522.89 escrow payment booking.

As a result of these duplicative and excessive credits in the total amount of $20,001.60, the Debtors' account resulted in a $20,103.13 current escrow balance being listed on the November 6, 2017 escrow account statement even though that would be more than double the amount that would have been paid by the Trustee. The artificial $20,103.13 current escrow balance on the November 6, 2017 escrow account statement triggered an escrow surplus check because the required balance at the time was only $2,183.85. As the credits were caused by a good faith attempt to correct an accounting error and not overpayment by the Debtors, the escrow surplus funds accidentally triggered by such credits should not be granted to the Debtors. If the Creditor was forced to both credit the escrow account for the improper booking of the escrow payments, and provide $17,919.28 to the Debtors, the Debtors would receive a significant unjust windfall.

DISCUSSION

The court begins at the beginning, the Objection grounds stated with particularity by the Debtor. Objection, Dckt. 59.

1. Creditor filed its secured claim in the amount of $233,047.13. Proof of Claim No. 2-1.

The court notes that original Proof of Claim No. 2-1 lists there being a pre-petition arrearage of $8,023.30 owed to Creditor. The same amount of arrearage is stated in Amended Proof of Claim 2-1 filed on November 21, 2016.

2. Creditor filed a Notice of Mortgage Payment Change on May 1, 2018, increasing the escrow payment from $189.53 to $309.08 a month.

The May 1, 2018 Notice of Mortgage Payment Change does state that the monthly escrow payment is increased from $189.53 to $309.08 a month. The explanation for this change is provided in a footnote on page 2 of the Notice, which states:

> "*A delay occurred in performing the Debtor's escrow analysis and an escrow shortage was identified. Due to the untimely performance of the escrow analysis, the escrow shortage has been designated as non-recoverable from the Debtor and will show as a credit on the Debtor's escrow account. The total escrow shortage listed in the statement is considered paid in full. The correct payment components and total payment amount are reflected on the official Notice of Mortgage Payment Change form."

Attached to the May 1, 2018 Notice is an Escrow Account Disclosure Statement which shows the computation of the escrow amount as being:

> County Tax.....$2,914.96
> Hazard SFH.....$ 794.00
>
> Total.....$3,708.96 ÷ 12 Months = $309.08 per month

On its face, the current monthly escrow amount of $309.08 appears to "pencil out" based on the above amount of property taxes and insurance. With the May 1, 2018, Notice, Debtor is starting with a clean slate with respect to any potentially asserted escrow arrearages, Creditor waiving them in light of there not being a timely adjustment of the prior escrow payments in light of increasing property taxes and/or insurance.

> 3. Debtor then notes that the Prior Year Account History and Coming Year Projections attached to the May 1, 2018, Notice reflect that there was an escrow surplus of $17,919.28 as of November 13, 2017.

In this Attachment to the May 1, 2018 Notice, a "Surpl. Refund" in the amount of $17,919.28 is shown for November 2017. Though this amount is marked with an "*," there is no footnote providing an explanation of this amount.

> 4. Debtor argues that because the "Surpl. Refund" amount is shown, Debtor is entitled to such surplus being applied to the loan, given to the Debtor, or refunded to the Trustee.

Thus, the dispute over the Notice of Mortgage Payment Change is not as to the computation of the monthly escrow payment amount, but a dispute as to whether any "surplus" exists for which the Debtor should be given credit.

The "evidence" of the surplus is the entry on the Attachment to the May 1, 2018, Notice of Mortgage Payment Change. Debtor does not allege that Debtor paid an "extra" $17,919.28 on the loan to create the surplus. Debtor offers no testimony in support of the Objection. Debtor only has directed Debtor's counsel to make this argument based upon the surplus entry on the Attachment.

The Chapter 13 Trustee provides his response, which is supported by testimony provided in a Declaration. Dckts. 70, 71, respectively. The Response (as supported by the Declaration) states that the Chapter 13 Trustee made the following disbursements to Creditor on its secured claim:

	Breakdown of Post-Petition Current Mortgage Payments As Set Forth in the Chapter 13 Plan, Proof of Claim No. 2 and the Notices of Mortgage Payment Change	Total Payments for Specified Period
40 Months	$700 a month Payment as Required Under the Chapter 13 Plan. On Proof of Claim No. 2 and May 12, 2017, Notice of Mortgage Payment Change (see Part 2 stating the amount of the current principal and interest payment), the interest portion of the payment is stated to be $493.50)	$28,000.00
6 Months	$1,507.58 a month Payment (May 12, 2017, Notice of Mortgage Payment Change $713.44 principal, $602.47 Interest, $189.53 Escrow)	$9,045.48
6 Months	$1,512.83 a month Payment (November 9, 2017, Notice of Mortgage Payment Change $713.44 principal, $602.47 Interest, $189.53 Escrow)	$9,076.98
1 Month	$1,730.01 a month Payment (Effective June 25, 2018 $655.52 principal, $755.41 Interest, $309.08 Escrow)	$1,730.01
	Total of Payments Reported For First Fifty-Three Months of the Chapter 13 Plan	$47,852.47

The Declaration provided with the Trustee's Response states that $43,271.98 was for the post-petition current mortgage payments and $6,294.72 was for the pre-petition arrearage cure. Declaration pages 4-5; Dckt. 71. A review of the chart in the Declaration discloses that payments were missed (and not made up with an extra payment in a subsequent month) in June 2017, September 2017, December 2018, and February 2018. These appear to account for the difference between the $47,852.47 in payments owed and $43,271.98 in payments made to Creditor for the current post-petition

In the Opposition, Creditor falls on the sword of its predecessor for failing to adjust the escrow amount for increases in insurance and taxes. Creditor acknowledges it own accounting shortcomings in connection with a proposed loan modification that was not approved by Creditor. (As the court has previously noted, once human beings are involved, errors will occur. It is not the error that is the problem, but how people react to such error – whether in good faith to correct, by offering feckless excuses/justifications, or attempting to use it as an opportunity for improper gain.)

It has been demonstrated that the "error" alleged by Debtor does not exist. The computation of the escrow payment does not appear to be incorrect. It is the anticipated property taxes and insurance for the year, divided by twelve months.

At this point, it appears the Parties need to focus on a much simpler accounting spreadsheet: current post-petition mortgage payments to be made as based on Proof of Claim No. 2 (which stated the current interest only payment) and then each of the Notices of Mortgage Payment Change. As opposed to a substantial surplus, in addition to having the benefit of not making the full escrow payments for several years, Debtor may have a couple months of payments to cure.

The Objection to Notice of Mortgage Payment Change as to the amount of the current monthly escrow payment is overruled.

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 Notice of Mortgage Payment Change filed by Steven Bruce McConnell and Deborah Sage McConnell ("Debtor" or "Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to Notice of Mortgage Payment Change as to the amount of the current monthly escrow payment is overruled.

11. **17-27077-E-13 PLC-3** **MICHAEL SCALLIN** **Peter Cianchetta** **MOTION TO CONFIRM PLAN 7-20-18 [59]**

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 July 20, 2018. By the court's calculation, 39 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

Michael Everett Scallin ("Debtor") seeks confirmation of the Amended Plan because Debtor's expenses changed after moving out of his parents' home, and because Debtor is now providing for the Internal Revenue Service's claim. Dckt. 61. The Amended Plan provides for monthly payments of $835.84 beginning August 25, 2018. Dckt. 62. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on July 27, 2018. Dckt. 70. Trustee argues Debtor's Amended Plan is not his best effort under 11 U.S.C. § 1325(b) because Debtor's monthly net income is $844.04 and Debtor's proposed Plan payment is $835.84 commencing August 25, 2018. Dckt. 70.

DEBTOR'S REPLY

Debtor filed a Reply to Trustee's Opposition on July 27, 2018. Dckt. 73. Debtor notes that the difference between Debtor's monthly expenses and Plan payment is $8.20. Debtor argues that this amount is a buffer reflecting fluctuating costs in monthly utility bills. Debtor states that if the extra $8.20 is necessary to confirm the Plan, Debtor consents.

The Trustee's argument is based on the facts for the Plan as advanced by Debtor. 11 U.S.C. § 1325(b) provides that where a trustee objects to confirmation of the plan, the court may not approve the plan unless:

> "the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan"
>
> 11 U.S.C. § 1325(b)(1)(B).

Here, Debtor's net income is in excess of his proposed Plan payments.

Debtor asserts the fluctuation of utility costs could easily absorb the excess net income of $8.20, and that the expense reported on Schedule J is only an estimate. Essentially, Debtor's counsel argues that the utility expense is not accurate, that proposing a budget to adequately provide for an average monthly expense for utilities (as does every other consumer who confirms a Chapter 13 Plan) is beyond the ability of this Debtor, and that it is counsel's conclusion that $8.20 is so small that it is not an impediment to confirmation. Debtor's counsel offers no legal standard for the court ignoring the projected disposable income calculation required by Congress (if there is less than a 100% and an objection) and how much "slush fund" monies - $8.20, $82.00, $820, or more - that a Debtor can take "off the books."

Essentially, Debtor and Debtor's counsel argue that the number on Schedule J are irrelevant because either:(1) the numbers are made up or (2) Debtor is incapable of living on a budget (which is necessary for the court to confirm a plan).

This puts in question for the court all of the "expenses" which are set out in the Schedule J filed on June 20, 2018 (Dckt. 48). Maybe they are accurate, or maybe they are "expenses not what will exactly be incurred." Response, p. 1:18; Dckt. 73. Is the expense of $1.47 per meal, per person (after allowing for $35 a month for housekeeping supplies) not "exactly what will be incurred?"

The Plan provides for payment of a secured claim for which the collateral is a 2015 Nissan Altima. Class 2 Secured Claim, ¶ 3.08(d). 62. The proposed plan also includes the payment of a secured claim for which a 1992 fishing boat is the collateral. *Id.*

Interestingly, on Amended Schedule A/B Debtor states under penalty of perjury that he has no vehicles and he has no boats. Schedule A/B, Questions 3,4; Dckt. 13 at 1. Debtor also states under penalty of perjury that he has no household goods, no electronics, no clothes, and no jewelry. *Id.*, Questions 6, 7, 11, and 12.

The court does not understand how Debtor is paying debts for the non-existing vehicle and boat.

On Amended Schedule I Debtor lists gross monthly income of $8,360 in wages. Dckt. 33 at 1. From this he states that there is $3,936 for taxes, medicare, and Social Security. Thus, Debtor states that 50% of his monthly wages goes to pay his taxes, Medicare, and Social Security. This high percentage does not appear to be a reasonable amount as compared to other similar debtors that have appeared in this court.

For other deductions, debtor includes $160 a month for "Company Car personal Use." *Id.* at 2. If Debtor has a company car, it appears questionable why Debtor is paying for a car that he doesn't own.. He court further notes on Supplemental Schedule J Debtor lists $87.00 a month paying for insurance for a car he does not own (unless he has to insure his employers car provided for him). Dckt. 48 at 4.

The Motion to Confirm and Declaration in support of confirmation do not enlighten the court as to any special claims or how Debtor is devoid of having any assets as stated under penalty of perjury on Amended Schedule A/B (Dckt. 13).

Debtor's Response having focused the court's inquiry into the inconsistent statements by Debtor under penalty of perjury, the court cannot determine that the Plan is feasible or that it is proposed in good faith.

The Amended Plan fails to comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and the Amended 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 Motion to Confirm the Amended Chapter 13 Plan filed by Michael Everett Scallin ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

12. **18-22883-E-13 MWB-1** **RICHARD HARRIS** **Mark Briden** **CONTINUED MOTION TO VALUE COLLATERAL OF WILMINGTON SAVINGS FUND SOCIETY 5-24-18 [19]**

No Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, and Office of the United States Trustee on May 24, 2018. By the court's calculation, 54 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Wilmington Savings Fund Society ("Creditor") is xxxxxxxxxxxx.

The Motion to Value filed by Richard Harris ("Debtor") to value the secured claim of Wilmington Savings Fund Society ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 17237 Marianas Way, Cottonwood, California ("Property"). Debtor seeks to value the Property at a fair market value of $295,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on July 2, 2018. Dckt. 34. The Chapter 13 Trustee notes that Creditor filed an objection to confirmation in this case alleging that the proposed plan included an impermissible lien strip (this Motion) and that Creditor had the Property appraised as being worth $360,000.00.

CREDITOR'S OPPOSITION

Creditor filed an Opposition on July 3, 2018. Dckt. 37. Creditor argues that it obtained an appraisal of the Property on May 31, 2018, showing that its value is $360,000.00. Because of that valuation, Creditor argues that its claim is fully secured by the excess equity in the Property, preventing Debtor from valuing Creditor's claim.

JULY 17, 2018, HEARING

At the hearing, Debtor agreed to a voluntary continuance of the hearing specially set at 1:00 p.m. on July 19, 2018.

JULY 19, 2018, HEARING

The appraisal attached as Exhibit 1 to Creditor's Opposition shows that the Property has a value of $360,000.00 as of May 31, 2018. Dckt. 38. No proofs of claim have been filed affecting the Property in this case. Debtor has listed the Property as having a value of $295,000.00 on Schedule A, with $1.00 claimed as exempt on Schedule C. Dckt. 1. On Schedule D, Debtor lists two claims as secured by the Property: one for $306,000.00 and the other for $82,000.00. *Id.*

Using the $360,000.00 value for the Property, there would be at least $53,999.00 in additional equity to support Creditor's claim secured by a second deed of trust.

However, the evidence of value presented is very slim for Debtor, he just stating an opinion that he, as the owner, believes the property is worth only $295,000. While the Appraisal would appear to identify a number of comparable properties, there is no testimony provided by Creditor.

At the hearing, the Parties requested a continuance so that a new appraisal could be obtained, reviewed with their clients, and further discussion undertaken. The court continued the Objection to Confirmation of Plan to 3:00 p.m. on August 28, 2018, for a Scheduling Conference. Dckt. 48.

SUPPLEMENTAL PLEADINGS

Creditor filed the Declaration of Kris Ralston, a certified real estate appraiser ("Ralston"), on the eve of this hearing, August 27, 2018. Dckt. 52. Ralston asserts the Property has a fair market value of $383,000.00 as of May 9, 2018. The Ralston Declaration also acts to authenticate Ralston's appraisal filed as Exhibit 1. Exhibit 1, Dckt. 53.

SCHEDULING CONFERENCE

At the August 28, 2018, hearing XXXXXXXXXX

13. **18-22883-E-13 ASW-1** **RICHARD HARRIS** **Mark Briden**

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY WILMINGTON SAVINGS FUND SOCIETY, FSB
6-21-18 [30]

No 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 21, 2018. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is xxxxxxxxxxxxx.

Wilmington Savings Fund Society, FSB, d/b/a Christiana Trust, as indenture trustee, for the CSMC 2017-1 Trust, Mortgage-Backed Notes, Series 2017-1 ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that it violates the anti-modification provisions of 11 U.S.C. § 1322(b)(2).

JULY 17, 2018 HEARING

At the hearing, Debtor and Creditor agreed to a voluntary continuance of the hearing specially set at 1:00 p.m. on July 19, 2018.

JULY 19, 2018 HEARING

Creditor's counsel argues that Creditor has a secured claim because counsel argues that the real property securing the claim has a value of $360,000. However, no person comes forward to provide testimony of value. Creditor has filed a document titled "Appraisal" as an exhibit, but there is no one who

has come forward to properly authenticate it or provide any expert testimony. The Exhibits not having been authenticated and there being no testimony, Creditor has not provided any credible evidence with the merely factual arguments in the Objection.

Creditor has a detailed discussion of the law and limitation of valuing secured claims for less than the value of the collateral. Further, Creditor argues that a debtor cannot "stip a lien" when the claim is not wholly unsecured (citing *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002)).

Unfortunately, Creditor has also chosen not to file a proof of claim in this case. As the Chapter 13 Plan clearly provides, it is the creditor's claim, in the absence of an order of the court, that controls the value of the secured claim. Plan ¶ 3.02. If Creditor had filed a secured claim, this Objection is as easy as: (1) Proof of Secured Claim filed for $82,000, (2) Plan does not provide for Secured Claim, (3) Objection sustained, but Creditor has not done that, depriving the court of a basis to deny confirmation.

Not having the necessary evidence, the court cannot determine what secured claim needs to be provided for in connection with Creditor. FN.1.

FN.1. The rejection of this objection may be but a Pyrrhic victory for the Debtors. If this asserted creditor is correct and an unprovided for arrearage exists, the court can envision shortly seeing a motion for relief from the stay. At that point, Debtor and counsel would have to prepare a modified plan, motion to confirm modified plan, evidence to support the modified plan, notice a hearing, and conduct a hearing on the proposed modified plan. Any such proceedings because of the unprovided for cure of the arrearage would be clearly anticipated work to be covered by the no-look fee and likely not be reasonable additional costs and expenses if counsel has chosen to opt out of the no-look fee.

The court continued the Objection to Confirmation of Plan is continued to 3:00 p.m. on August 28, 2018, for a Scheduling Conference. Dckt. 47.

AUGUST 28, 2018 HEARING

Creditor has now filed Proof of Claim No. 7 asserting an $82,232.93, with a pre-petition arrearage of $2,673.86. Proof of Claim No.7 was filed on July 18, 2018. No objection to the claim has been filed.

At the Hearing, xxxxxxxxxxxxxx

14. **18-22883-E-13** **RICHARD HARRIS** **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK**
DPC-1 **Mark Briden** **6-18-18 [26]**

No 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 7 Trustee on June 18, 2018. By the court's calculation, 29 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is XXXXXXXXXXX

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

A. Richard Harris ("Debtor") cannot comply with the Plan because of an active Chapter 7 case (No. 18-21699);

B. Debtor admitted to having additional income at the Meeting of Creditors; and

C. The Plan relies on a pending motion to value.

First, the court notes that Debtor's Chapter 7 Case has been dismissed. No. 18-21699, Dckt. 28. As to the additional income, Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor admitted at the Meeting of Creditors that two sources of income (from Social Security for a granddaughter and from Shasta County) may cease providing funds, and the non-filing spouse

may be employed such that Schedule I's calculations would be incorrect. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Wilmington Savings Fund Society, FSB, d/b/a Christiana Trust, as indenture trustee, for the CSMC 2017-1 Trust, Mortgage-Backed Notes, Series 2017-1 ("Creditor"). The court heard Debtor's motion to value Creditor's claim at the July 17, 2018 hearing and denied it. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

DEBTOR'S DECLARATION

Debtor filed a Declaration on July 10, 2018. Dckt. 43. Debtor states that his wife become employed against on May 14, 2018, as well as receiving disability payments from the state of California. He states that the total amount of her contributions to the Plan would be $692.00 per month.

Debtor states that the Shasta County program will not be terminated because it has been renewed, but he does not state for how long. Debtor claims that the program will provide him with $630.00 per month on average.

For Social Security payments, he states that payments to his granddaughter will decrease from $815.00 to $374.00 per month beginning on September 1, 2018.

JULY 17, 2018 HEARING

At the hearing, Debtor and the Chapter 13 Trustee agreed to a voluntary continuance of the hearing specially set at 1:00 p.m. on July 19, 2018.

JULY 19, 2018, HEARING

The court continued the Objection to Confirmation of Plan to 3:00 p.m. on August 28, 2018, for a Scheduling Conference. Dckt. 48.

SCHEDULING CONFERENCE

At the August 28, 2018, hearing XXXXXXXXXX

FINAL RULINGS

15.	**18-23603-E-13 DPC-1**	**MAUREEN HAGAN Stephen Brown**	**OBJECTION TO DISCHARGE BY DAVID P. CUSICK 7-5-18 [17]**

Final Ruling: No appearance at the August 28, 2018, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on July 5, 2018. By the court's calculation, 54 days' notice was provided. 28 days' notice is required.

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

The Objection to Discharge is sustained.

David Cusick, the Chapter 13 Trustee ("Objector"), objects to Maureen Samantha Hagan's ("Debtor") discharge in this case. Objector argues that Debtor is not entitled to a discharge in the instant bankruptcy case because Debtor previously received a discharge in a Chapter 7 case.

Debtor filed a Chapter 7 bankruptcy case on May 12, 2017. Case No. 17-23260. Debtor received a discharge on August 21, 2017. Case No. 17-23260, Dckt. 14.

The instant case was filed under Chapter 13 on June 8, 2018.

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

Here, Debtor received a discharge under 11 U.S.C. § 727 on August 21, 2018, which is less than four years preceding the date of the filing of the instant case. Case No. 17-23260, Dckt. 14. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), Debtor is not eligible for a discharge in the instant case.

Therefore, the Objection is sustained. Upon successful completion of the instant case (Case No. 17-23260), the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant case.

The court shall issue 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 Discharge filed by David Cusick, the Chapter 13 Trustee, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to Discharge is sustained, and upon successful completion of the instant case, Case No. 18-23603, the case shall be closed without the entry of a discharge.

16. **18-23848-E-13 DPC-1** **RHONDA DEJESUS** **Marc Carpenter** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **7-27-18 [18]**

Final Ruling: No appearance at the August 28, 2018 hearing is required.

Local Rule 9014-1(f)(2) Objection.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on July 27, 2018. By the court's calculation, 32 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The Objection to Confirmation is overruled as moot.

David Cusick ("the Chapter 13 Trustee") objects to confirmation of Rhonda Dejesus' ("Debtor") Chapter 13 plan. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Objection, Debtor filed a First Amended Plan and corresponding Motion to Confirm on August 3, 2018. Dckts. 22, 23. Filing a new plan is a de facto withdrawal of the pending plan.

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

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

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

IT IS ORDERED that the Objection is overruled as moot.

17. **18-23948-E-13** **CHERYL MCNEAL** **OBJECTION TO CONFIRMATION OF**
DPC-1 **Richard Jare** **PLAN BY DAVID P. CUSICK**
7-30-18 [21]

Final Ruling: No appearance at the August 28, 2018 hearing is required.

David Cusick ("the Chapter 13 Trustee") having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Objection to Confirmation was dismissed without prejudice, the matter is removed from the calendar, and the Chapter 13 Plan filed on June 25, 2018, is confirmed.**

An Order Confirming Plan has been ordered August 11, 2018. Dckt. 27.

18. **18-23297-E-13** **ROWENA GARCIA** **MOTION TO CONFIRM PLAN**
HLG-1 **Kristy Hernandez** **7-16-18 [25]**

Final Ruling: No appearance at the August 28, 2018 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, and Office of the United States Trustee on July 17, 2017. 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 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. Rowena Morales Garcia ("Debtor") has provided evidence in support of confirmation. David Cusick ("the Chapter 13

Trustee") filed a Non-Opposition July 25, 2018. Dckt. 31. 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 Rowena Morales Garcia ("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 July 16, 2018, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick ("the Chapter 13 Trustee") for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

19. 14-28968-E-13 EJS-4 | **KATHERINE PONGRATZ** **Eric Schwab** | **MOTION FOR COMPENSATION FOR ERIC J. SCHWAB, DEBTORS ATTORNEY(S) 7-12-18 [88]**

Final Ruling: No appearance at the August 28, 2018 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 the Chapter 13 Trustee, creditors, and Office of the United States Trustee on July 12, 2018. By the court's calculation, 47 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Eric Schwab, the Attorney ("Applicant") for Katherine Pongratz, 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 September 4, 2014, through July 9, 2018. Applicant requests fees in the amount of $3,280.00.

Applicant's Motion provides that since filing, "a number of substantial and unanticipated issues have arisen." Dckt. 88, ¶ 4. Applicant then provides a list of the issues. Id., ¶ 5. No explanation is offered for why these issues were substantial or unanticipated. Applicant's Declaration provides the following explanation: "The initially agreed upon fees are not sufficient to compensate my office for the services that have been rendered in this case." Dckt. 90, ¶ 3.

TRUSTEE'S NONOPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee") filed a Response to this Motion on August 13, 2018. Dckt. 98. Trustee does not oppose this Motion.

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)).

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 services for the Estate, fr which they are requesting fees herein, include drafting and proposing three motions to modify Debtor's Plan and defending Debtor in three Motions to Dismiss. The court finds the services were beneficial to Client and the Estate and were reasonable.

"No-Look" Fees

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

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

. . .

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

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

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

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

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed $4,000.00 in attorneys' fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 15. 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.

Client Communications: Applicant spent 6.5 hours in this category. Applicant consulted and teleconferenced with client to prepare schedules, Plan, and Plan modifications.

Plan Preparation: Applicant spent 4.1 hours in this category. Applicant prepared and submitted schedules, statement, Plan, an participated in 341 meeting.

Motions to Dismiss: Applicant spent 1.8 hours in this category. Applicant opposed motions to dismiss filed against Debtor and attended hearings in that capacity.

Motions to Modify Plan: Applicant spent 8.4 hours in this category. Applicant prepared Plan modifications and attendant motions, responses to opposition, and attended hearings on those matters.

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**
Eric Schwab	20.8	$350.00	$7,280.00
Total Fees for Period of Application			$7,280.00

FEES AND COSTS & EXPENSES ALLOWED

The unique facts surrounding the case, including three modified plans and five dismissal 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, after discounting the final fee, effectively used appropriate rates for the services provided. The request for additional fees in the amount of $3,280.00 is approved pursuant to 11 U.S.C. § 330 and authorized to be paid by David Cusick ("the Chapter 13 Trustee") from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

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

Fees $3,280.00

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

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

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

The Motion for Allowance of Fees and Expenses filed by Eric Schwab ("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 Eric Schwab is allowed the following fees and expenses as a professional of the Estate:

Fees in the amount of $3,280.00,

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

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

20. **17-27269-E-13** **RONALD SCOTT** **MOTION FOR COMPENSATION FOR**
SDH-3 **Scott Hughes** **SCOTT D. HUGHES, DEBTORS ATTORNEY(S)**
7-24-18 [34]

Final Ruling: No appearance at the August 28, 2018 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 the Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 24, 2018. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Scott Hughes, the Attorney ("Applicant") for Ronald Scott, 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 December 17, 2017, through July 20, 2018. Applicant requests fees in the amount of $3,150.00 for additional services provided in this case for Debtor.

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)).

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 services for the Estate include an ex parte motion to sell, and efforts to effectuate the sale of Debtor's residence. 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. 20. 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.

Ex Parte Motions to Employ Real Estate Broker and Approve Sale of Debtor's Residence: Applicant spent 8.4 hours in this category. Applicant Prepared and filed an ex parte application and order to employ Fred Festersen as debtor's real estate broker; Worked with the debtor, his real estate broker, Stewart Title Company and the trustee regarding obtaining court approval of the sale of the debtor's residence; Prepared and filed an ex parte motion and order to approve the sale of the debtor's residence; Worked with the trustee's office regarding the specific language needed for the ex parte motion and order approving the sale; Worked with the trustee's office regarding the amount of a payoff demand made by the trustee to the Title Company and the amount of a revised demand; Contacted the trustee's office regarding the status of the sale proceeds and asking when the debtor will get a refund; Worked with the trustee to obtain an early partial refund of the sales proceeds of the debtor's residence for the debtor on an emergency basis; Obtained a special check for $95,000 cut early by the trustee to be picked up at the trustee's office by the debtor on July 20, 2018.

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**
Scott Hughes	8.4	$375.00	$3,150.00
Total Fees for Period of Application			$3,150.00

FEES AND COSTS & EXPENSES ALLOWED

Fees

The unique facts surrounding the case, including preparation of the motions and continuous engagement with all interested parties to facilitate an early resolution of Debtor's Plan, raise substantial and unanticipated work for the benefit of the Estate, Debtor, and parties in interest. The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. The request for additional fees in the amount of $3,150.00 is approved and authorized to be paid by David Cusick ("the Chapter 13 Trustee") from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

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

Fees $3,150.00

pursuant to this Application as substantial and unanticipated fees as counsel for Debtor 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 Scott Hughes ("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 Scott Hughes is allowed the following fees and expenses as a professional of the Estate:

Scott Hughes, Professional Employed by Ronald Scott ("Debtor")

Fees in the amount of $3,150.00,

as additional fees and expenses for substantial and unanticipated work for Debtor in this case in addition to the set fees approved in this case.

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