UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

September 14, 2021 at 2:00 p.m.

1.	**19-24802-E-13** **CK-7**	**GREGORY/CHO FRENCH** **Catherine King**	**MOTION TO MODIFY PLAN** **8-2-21 [126]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 2, 2021. By the court's calculation, 43 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is xxxxx.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtors, Gregory W. French and Cho Y. French ("Debtors"), have filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on August 25, 2021 noting that Debtor had failed to serve the Internal Revenue Service according to LBR 2002-1(c), which requires additional service to government agencies, including:

> United States Department of Justice
> Tax Division
> Civil Trial Section Western Region
> Box 683 Ben Franklin Station
> Washington, DC 20044

Dckt. 136. A review of Debtor's Certificate of Service shows that Debtor failed to serve the address above.

At the hearing, xxxxx

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by the debtors, Gregory W. French and Cho Y. French ("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 the Motion is xxxxx.

2. **19-25903-E-13 MJG-1** **SCOTT MUELLER** **Matthew Gilbert** **MOTION TO INCUR DEBT** **8-25-21 [19]**

2 thru 3

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, creditors, parties requesting special notice, and Office of the United States Trustee on August 25, 2021. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

The Motion to Incur Debt 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 Incur Debt is granted.

Scott W. Mueller ("Debtor") seeks permission to purchase real property commonly known as 4845 Windsong Way, Shingle Springs, California 95682, with a total purchase price of $765,000.00 and monthly payments of $4,338.00 to Veterans United Home Loans over 30 years with a 3.564% fixed interest rate.

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." FED. R. BANKR. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the Motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Incur Debt filed by Scott W. Mueller ("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 Scott W. Mueller is authorized to incur debt pursuant to the terms of the agreement, Exhibit B, Dckt. 23.

3. **19-25903-E-13 MJG-2** **SCOTT MUELLER** **Matthew Gilbert** **MOTION TO EMPLOY HOMESMART ICARE REALTY AS REALTOR(S) 8-25-21 [25]**

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, creditors, parties requesting special notice, and Office of the United States Trustee on August 25, 2021. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

The Motion to Employ is granted.

The Chapter 13 debtor, Scott William Mueller ("Debtor") seeks to employ Andrea Florez ("Agent") working for real estate broker pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Debtor seeks the employment of Agent to purchase residential real property.

Debtor argues that Agent's appointment and retention is necessary to complete the purchase of residential real property. Agent will be fully paid by the seller in the transaction from the proceeds of the purchase price in the amount of two and one-half (2.5) percent of the sales transaction. Thus, Agent will not be paid commission by Debtor.

Andrea Florez, a Real Estate Agent of HomeSmart ICARE Realty, testifies that she is a licensed real estate agent in the State of California and is seeking to be employed by Debtor to assist in the purchase of the residential real property. Andrea Florez testifies she and the company do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with

Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

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

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

Taking into account all of the relevant factors in connection with the employment and compensation of Agent, considering the declaration demonstrating that Agent does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Andrea Florez as Agent for the Chapter 13 Estate on the terms and conditions set forth in the Disclosure and Purchase Agreement filed as Exhibit A, Dckt. 28. Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Employ filed by Scott William Mueller ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Employ is granted, and Debtor is authorized to employ Andrea Florez as Agent for Debtor on the terms and conditions as set forth in the Disclosure and Proposed Purchase Agreement filed as Exhibit A, Dckt. 28.
>
> **IT IS FURTHER ORDERED** that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328. By this Order, the court authorizes and allows the payment of fees to Andrea Florez, as the agent for Debtor, in an amount not to exceed 2.5% of the gross sales price to purchase the property, with the fees to be paid by Seller as such is commonly done for Realtors to be paid their commissions from the sale proceeds received by a seller of real property.
>
> **IT IS FURTHER ORDERED** that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.

4. **19-26603-E-13** **CHI-MENG MOUA** **MOTION TO SELL**
SLH-1 **Seth Hanson** **8-9-21 [23]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 6, 2021. By the court's calculation, 39 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion to Sell Property is xxxxx.

The Bankruptcy Code permits Chi-Meng Teng Moua, the Chapter 13 Debtor, ("Movant") to sell property of the estate under the confirmed plan after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the real property commonly known as 2254 Craig Ave, Sacramento, California 95832 ("Property").

The proposed purchaser of the Property is Sara Rotella, and the terms of the sale are:

A. Sale amount is $390,000.00 with the closing date being thirty (30) days after acceptance.

B. All costs of sale, such as escrow fees, title insurance, and broker's commissions, will be paid in full from the sale proceeds by the title company handling the transaction.

C. Seller will pay the following: owner's title insurance policy, county transfer tax, city transfer tax, and standard one-year home warranty plan.

D. Debtor will not relinquish title to or possession of the subject property prior to payment in full of the purchase price.

Trustee filed an Opposition on the basis that Debtor failed to file the sale documents as exhibits and thus Trustee is unable to review the details of the sale of Debtor's property. Dckt. 28.

Debtor filed the corresponding documents as exhibits on August 24, 2021. Dckt. 31. In the Response, Debtor notes that the exhibits, including all referenced exhibits, had been served to all interested parties as indicated in the Certificate of Service. Dckt. 32.

Trustee withdrew the Opposition to the sale on September 1, 2021 so long as the order approving the sale includes the following information:

1. Trustee must approve any Title Company used in connection with the escrow.

2. The escrow is not permitted to close without Trustee submitting a demand to the title company that complies with the Chapter 13 Plan, or waives this right in writing.

3. Debtor is required to provide Trustee with all of the contact information for the Title Company upon opening of escrow.

4. Any excess funds over and above the amount of Trustee's demand can be disbursed directly to Debtor.

5. Trustee must approve the final closing statement prior to any close of escrow.

6. If any of these conditions are not met or Trustee cannot participate in the escrow in a way that complies with the Chapter 13 plan, Trustee can submit an Ex Parte Application to the Court explaining the issues and requesting that the motion to sell be denied or an OSC issued to bring the matter back before the Court to complete the sale.

Dckt. 34.

DISCUSSION

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because Debtor will pay the Plan in full with the sale proceeds.

Movant has estimated that a 2.5 percent broker's commission from the sale of the Property

will equal approximately $9,750.00. This commission is for Buyer's broker. As part of the sale in the best interest of the Estate, the court permits Movant to pay the Buyer's broker an amount not more than 2.5 percent commission.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Sell Property filed by Chi-Meng Teng Moua, the Chapter 13 Debtor, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Chi-Meng Teng Moua, the Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Sara Rotella ("Buyer"), the Property commonly known as 2254 Craig Ave., Sacramento, California 95832 ("Property"), on the following terms:
>
> A. The Property shall be sold to Buyer for $390,000.00 on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 31, and as further provided in this Order.
>
> B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.
>
> C. The Chapter 13 Debtor is authorized to execute any and all documents reasonably necessary to effectuate the sale.
>
> D. The Chapter 13 Debtor is authorized from the sales proceeds to pay a real estate broker's commission in an amount not more than 2.5 percent of the actual purchase price upon consummation of the sale. The 2.5 percent commission shall be paid to the Buyer's broker, Gregory Realty Group.
>
> E. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtor. Within fourteen days of the close of escrow, the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.

5. **19-21705-E-13** **TOBY TOLEN** **MOTION TO MODIFY PLAN**
JGD-13 **John Downing** **7-30-21 [188]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on, Chapter 13 Trustee, creditors, and parties requesting special notice on July 30, 2021. By the court's calculation, 46 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

The debtor, Toby Charles Tolen ("Debtor") seeks confirmation of the Modified Plan to account for the EDD not filing a claim, Debtor's ongoing health issues, and pausing operation of his lumber business since October 2020. Declaration, Dckt. 191. The Modified Plan provides for payments of 1,450.00 for months 29 through 60, and a one (1) percent dividend to unsecured claims totaling $159,466.82. Modified Plan, Dckt. 190. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on August 25, 2021. Dckt. 197. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor may not be able to make payments.

B. The plan proposes to change the interest rate of a secured claim.

DISCUSSION

Failure to Afford Plan Payment / Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Trustee asserts that Debtor has failed to file supplemental Schedules I and J after testifying in his Declaration that he has paused the operation of his business and is now working as an independent contractor. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Class 2A Interest Rate

Trustee points out that the Debtor's plan changes creditor Tri Counties Bank's Interest rate from nine (9) percent to five (5) percent rate. A review of the Certificate of Service shows that Debtor served Tri Counties Bank at

> Tri Counties Bank
> Tri Counties Bank Legal Department
> Post Office Box 992570
> Redding, CA 96099-2570

Dckt. 192. According to California Secretary of State website, Tri Counties Bank has their Agent of Service identified as:

> RICHARD P SMITH
> 63 CONSTITUTION DRIVE
> CHICO CA 95973

https://businesssearch.sos.ca.gov/CBS/Detail. There being a Due Process issue where Creditor is to receive less than the original interest rate and not receiving service, this modification violates the Due Process Clause of the United States Constitution.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Toby Charles Tolen ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion to Confirm the Modified Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

6. **20-23209-E-13** **ANDREW/DIANE GARCIA** **MOTION TO MODIFY PLAN**
HDR-4 **Harry Roth** **7-30-21 [74]**

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

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

Sufficient Notice **NOT** Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on July 29, 2021. By the court's calculation, 47 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Certificate of Service lists as served: Westlake Financial and Wilmington Savings Fund Society, FSB. According to the mailing matrix for this case, there are 53 entities to be served.

At the hearing **xxxxxxx**

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

The Motion to Confirm the Modified Plan is denied.

The debtors, Andrew Garcia and Diane Garcia ("Debtor") seek confirmation of the Modified Plan to increase plan payments. Declaration, Dckt. 78. The Modified Plan provides for payments of $2,110.00 for 47 months beginning August 2021, and a zero (0) percent dividend to unsecured claims totaling $16,528.53. Modified Plan, Dckt. 76. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"),filed an Opposition on August 25, 2021. Dckt. 88. Trustee opposes confirmation of the Plan on the basis that:

A. The Plan fails to provide for a dividend to certain claims.

B. Debtor proposes to change the interest rate for a secured claim.

C. Debtor did not serve all parties in interest.

DISCUSSION

Failure to Provide Dividend

Trustee argues that he cannot comply with the plan. Debtor proposes a $0.00 dividend to Class 1 arrears claim and to the Class 2 claim. $24,893.95 remains to be paid on the Class 1 arrears claim. $3,583.77 remains to be paid on the class 2 claim. Thus, it is impossible for Trustee to pay the claim of this creditor through the plan with a monthly dividend specified at $0.00.

Class 2B Interest Rate

According to Trustee, the Bankruptcy Code does not allow for Debtor to change the interest rate in a post-confirmation modified plan. Debtor's proposed Plan seeks to change the interest rate on the secured debt owed to Westlake Financial in Class 2B from 4.75% to 23.99%. Trustee asserts that he has already paid Westlake Financial according to the previously confirmed plan.

Service

Trustee notes that Debtor failed to serve all parties of interest where the mailing matrix for this case lists 50 parties and only four were served according to the Proof of Service.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by the debtors, Andrew Garcia and Diane 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 Motion to Confirm the Modified Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

7.	**21-20109-E-13** **RPH-1** **7 thru 8**	**LARRY/DEBRA JACKSON** **Robert Huckaby**	**CONTINUED MOTION TO CONFIRM PLAN** **6-2-21 [57]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 2, 2021. By the court's calculation, 55 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the 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 xxxxx.

The debtor, Larry John Jackson and Debra Ann Jackson ("Debtor") seek confirmation of the Chapter 13 Plan. The Plan provides plan payments of $2,500 for sixty months, and a zero percent dividend to creditors with unsecured claims. Amended Plan, Dckt. 59. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on July 13, 2021. Dckt. 75. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor has not provided business documents to Trustee.

B. There are no attachments to Schedule I for business or rental property gross receipts.

C. Debtor has failed to file a Motion to Value Collateral.

DISCUSSION

Failure to File Documents Related to Business

Debtor has failed to timely provide the Chapter 13 Trustee with business documents including:

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

11 U.S.C. §§ 521(e)(2)(A)(i), 704(a)(3), 1106(a)(3), 1302(b)(1), 1302(c); FED. R. BANKR. P. 4002(b)(2) & (3). Debtor is required to submit those documents and cooperate with the Chapter 13 Trustee. 11 U.S.C. § 521(a)(3). Without Debtor submitting all required documents, the court and the Chapter 13 Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325.

The Trustee reports that the only thing missing is the contractor's license.

Failure to File Business Documents Required by Schedule I

The Chapter 13 Trustee argues that Debtor has failed to file a statement of gross business income and expenses attached to Schedule I. Line 8a of Schedule I requires Debtor to "[a]ttach a statement for each property and business showing gross receipts, ordinary and necessary business expenses, and the total monthly net income." Debtor is required to submit that statement and cooperate with the Chapter 13 Trustee. 11 U.S.C. § 521(a)(3). Debtor has not provided the required attachment.

Debtor's Reliance on Motion to Value Secured Claim

A review of Debtor's Plan shows that it relies on the court valuing the collateral of Les Schwab Tire Centers of California, Inc. Debtor has failed to file a Motion to Value Collateral of Les Schwab Tire Centers of California, Inc., however. Without the court valuing the collateral, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

At the hearing initial hearing on this Motion, Debtor's counsel addressed how these issues have been or would be resolved, and requested a continuance of the hearing. No opposition to the continuance was stated.

Debtor's Response

Debtor filed a Response to provide supplemental financial information. [Fn. 1.] Dckt. 85. In support of this response, Debtor filed their Declaration and the Profit and Loss Statement for the year 2020 for their company Log Guys Inc., a California corporation.

FN.1. Debtor filed an Amended Response, the same date, to correct the DCN stated in the original Response. Both documents being the same, the court has discussed the first one filed, Dckt. 85.

In their Declaration, Debtor testifies to the following:

1. Debtor operated the business Log Guys Inc., a California corporation, as the principle business activity and kept their California contractor's license under Larry Jackson Construction to keep the old license number. This company builds custom log homes, primarily in the Lake Tahoe area.

2. Debtor Debra took a salary from Log Guys, Inc., which is reported as co-debtor's income, included in the business operating expenses.

3. Debtor drew an average of $7,500 per month for personal living expenses for the last few years from that business's $800,000 gross revenue in the past few years. This is the income shown on Schedule I and was used for the Means Test in this case.

4. The Profit and Loss Statement for the business filed as Exhibit 1 shows a profit of $51,565.00 for 2020, which was provided to Trustee prior to the Meeting of Creditors. See Exhibit 1, Dckt. 86.

5. The business was operated as a corporation, a legal entity separate from Debtor, with income taxes reported as a pass-through to the debtor/owner under Subchapter S of the Internal Revenue Code.

Dckt. 87.

September 14, 2021

At the hearing xxxxxxxx

8. **21-20109-E-13 ANF-1** **LARRY/DEBRA JACKSON** **Robert Huckaby** **KEYPOINT CREDIT UNION VS.** **CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY** **7-6-21 [65]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on July 2, 2021. By the court's calculation, 18 days' notice was provided. 14 days' notice is required.

The Motion for Relief from 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.

The Motion for Relief from the Automatic Stay is xxxxx.

Keypoint Credit Union ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2017 Ford Truck Escape, VIN ending in 8387 ("Vehicle"). The moving party has provided the Declaration of Megan Pieracci to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Larry John Jackson and Debra Ann Jackson ("Debtor").

Movant argues Debtor has not made two (2) post-petition payments, with a total of $676.36 in post-petition payments past due. Declaration, Dckt. 68.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be $15,692.59 (Declaration, Dckt. 68), while the value of the Vehicle is determined to be $15,700.00, as stated in Schedules A/B and D filed by Debtor.

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

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

11 U.S.C. § 362(d)(2)

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

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, for no particular reason, that the court grant relief from the Rule as adopted by the United States Supreme Court. With no grounds for such relief specified, the court will not grant additional relief merely stated in the prayer.

At the July 20, 2021 hearing, Movant's counsel provided an oral addendum to the Motion, stating that the grounds for providing relief from the fourteen day stay is the Debtor's not providing proof of insurance.

Debtor's counsel appeared and reported that Debtor has cured the default in payments, but no evidence was presented to the court.

The court continued the hearing to 2:00 p.m. (Specially Set Time) on July 27, 2021, to be conducted in conjunction with the Debtor's Motion to Confirm a Chapter 13 Plan in this case. The proposed Chapter 13 Plan provides for Movant in Class 4 – direct payment by Debtor of a pre-petition claim not in default – for which the automatic stay is modified to allow Creditor to exercise its rights against its collateral in the event of a default.

July 27, 2021 Hearing

At the hearing Creditor reported that proof of insurance has been provided and Debtor is current. Creditor did not object to the hearing on this Motion being continued to the same time as the continued hearing on confirmation.

September 14, 2021 Hearing

At the hearing xxxxxxxx

9. 20-21910-E-13 FF-6 | **TIMOTHY TROCKE** **Gary Fraley** | **CONTINUED MOTION TO CONFIRM PLAN** **12-17-20 [149]**

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on December 17, 2020. By the court's calculation, 47 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm Plan is xxxxx.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Timothy Tobias Trocke ("Debtor") has provided evidence in support of confirmation. The Amended Plan provides for payments of $100.00 commencing December 25, 2020 and all net proceeds from the sale of the real property commonly known as 1671 Rosalind Street, Sacramento, California to be turned over directly to the Chapter 13 Trustee after fees and costs, sufficient to pay all creditors proposed to be paid through the plan and will complete the plan. Amended Plan, Dckt. 151. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

On January 19, 2021, the Chapter 13 Trustee, David p. Cusick ("Trustee") filed a Non-opposition noting that the court granted Debtor's Motion to Sell Free and Clear of Liens on December 22, 2020 and that the Escrow Closing Statement submitted by the title company showed the Trustee was to receive his demand of all net proceeds, approximately $72,000. Dckt. 199.

HISTORY OF THE MOTION

The hearing on this Motion has been continued several times since the original hearing on February 2, 2021 in order to address Debtor's Objections to the Claim of Roger Anderson, Trustee of the RWA Trust dated March 14, 2014 ("Creditor").

On April 6, 2021 Trustee filed an Amended Response requesting the court take into consideration that Debtor has paid $80,512.03, which $72,297.03 was paid from Chicago Title Company from proceeds of sale of real property, into the Plan and the Debtor is now current in plan payments. Dckt. 239.

The Objection was decided in two phases. In Phase 1, the court sustained Debtor's Objection to Creditor's original Proof of Claim finding that Proof of Claim 2-1 was deficient in many ways, including: (1) failing to provide itemizations, and (2) failing to provide the loan payment history, failing to state the cure amount (and instead stating that the full obligation that was not yet due was the cure amount). Creditor filed a First Amended Proof of Claim while the Objection to Original Proof of Claim 2-1 was still a contested matter in front of the court. In Phase 2, Debtor filed a claim objection to Creditor RWA's Amended Claim 2 filed on January 26, 2021 where Creditor increased the claim from $126,635.02 to $180,264.76.

Then, on April 19, 2021, the day before the scheduled April 20, 2021 hearing on Phase 2 of the Objection, Creditor filed a Second Amended Proof of Claim 2-3, continuing in the rolling filing notwithstanding there being the pending Contested Matter in which the Parties were providing their evidence and legal arguments concerning Creditor's claim. The amended Proof of Claim 2-3 states a secured claim in the amount of $183,094.13.

The court further continued the April 27, 2021 to 2:00 p.m. on May 25, 2021 having taken under submission the Objection to the Claim of Roger Anderson and allowing a reasonable time for the parties to engage in constructive settlement talks in light of what was addressed at that hearing.

Additionally, the Debtor and Chapter 13 Trustee had identified several "tweaks" that Debtor may be making to the Plan.

The objection to the Second Amended Claim 2-3 was further continued to June 29, 2021, to allow for the court to finalize its ruling on the Objection.

June 29, 2021 Hearing

At the hearing, the court will review the decision being issued on the claim objection and address how the parties want to proceed.

As addressed at the hearing, the court continues this matter to allow for the court to issue the Decision and Order on the Objection to Claim and for the parties to file their post-judgment motions relating to that Decision and Order, with the hearing on such motions to be conducted at 2:00 p.m. on August 31, 2021. The court continues the hearing on this Motion to that time and date so that the Debtor may have it as a vehicle for any amendments that may be required resulting from the court's rulings.

August 31, 2021 Hearing

No additional documents have been filed in support of this motion. A review of the Proofs of Claim filed shows that Creditor Roger Anderson has not yet filed an amended Proof of Claim after the court issued its decision which reflected a reduction of their claim.

At the hearing Debtor's counsel requested a further continuance as they wrap up the loose ends in this case. No opposition to the continuance was stated.

September 14, 2021 Hearing

No further pleadings have been filed and Creditor Roger Anderson has not yet amended their Proof of Claim.

At the hearing xxxxxxxx

10. 20-21211-E-13 FELICIA HICKS MOTION TO MODIFY PLAN
CDL-22 Colby LaVelle 8-9-21 [92]
10 thru 12

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 5, 2021. By the court's calculation, 40 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 xxxxx.

The debtor, Felicia Lynn Hicks ("Debtor") seeks confirmation of the Modified Plan to extend the plan for an additional 12 months after defaulting in plan payments due to her mother becoming ill and Debtor missing time at work to help take care of her. Declaration, Dckt. 94. The Modified Plan provides for 35 plan payments of $227.87 (from March 2021 through January 2024), followed by one plan payment of $93.43 (on February 2024), and a two (2) percent dividend to unsecured claims totaling $31,085.89. Modified Plan, Dckt. 62. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on August 25, 2021. Dckt. 96. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor is delinquent in plan payments.

B. Debtor reused the DCN for a previous Motion to Confirm the Plan.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is $227.35 delinquent in plan payments, which represents one month of the $227.87 plan payment. Before the hearing, another plan payment will be due. According to the Chapter 13 Trustee, the Plan in § 2.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Docket Control Number

LBR 9014-1(c) provides that each motion must have its own docket control number ("DCN"). According to Trustee, debtor assigned DCN CDL-22 to the instant motion, where Debtor had previously used this DCN for a motion filed on May 8, 2021, Dckt. 63. Thus, Debtor failed to comply with local rules.

At the hearing xxxxxxxx

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Felicia Lynn Hicks ("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 xxxxx.

11. 20-21211-E-13 CDL-61521 FELICIA HICKS Colby LaVelle

CONTINUED MOTION TO MODIFY PLAN
6-17-21 [74]

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

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 17, 2021. By the court's calculation, 40 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).

A review of the Certificate of Service shows that Debtor failed to serve the Internal Revenue Service and the United States Attorney as required under the local rules.

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 dismissed without prejudice.

The debtor, Felicia Lynn Hicks ("Debtor") seeks confirmation of the Modified Plan because Debtor has been furloughed from work, has not received IHSS payments as anticipated, and has had to help her ill mother with care and medical bills. Declaration, Dckt. 76. The Modified Plan provides monthly payments of $227.87, culminating with one monthly payment of $93.43 on February 2024, and a two percent dividend to unsecured claims totaling $31,085.89. Modified Plan, Dckt. 62. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on July 13, 2021. Dckt. 84. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor failed to properly serve the Internal Revenue Service, the U.S. Attorney's Office, and the Department of Justice.

B. Debtor has incurred a new debt without the Court's permission.

C. Debtor has not complied with Local Rule 9041-1 (c)(3).

DISCUSSION

Insufficient Notice

Federal Rule of Bankruptcy Procedure 2002(b)(2) requires twenty-eight days' notice "for filing objections and the hearing to consider confirmation of a . . . chapter 13 plan." FED. R. BANKR. P. 2002(b)(2). Debtor has failed to serve all parties in interest. Local Rule 2002-1(a) and (c) provide:

> (a) When listing a debt to the United States for other than taxes, the debtor shall separately list both the U.S. Attorney and the federal agency through which the debtor became indebted, as required by Fed. R. Bankr. P. 2002(j)(4). The address listed for the U.S. Attorney shall include, in parentheses, the name of the federal agency as follows:
>
> (c) In addition to addresses specified on the Roster of Governmental Agencies maintained by the Clerk, notices in adversary proceedings and contested matters relating to the Internal Revenue Service shall be sent to all of the following addresses:
>
> 1) United States Department of Justice
> Tax Division
> Civil Trial Section, Western Region
> Box 683, Ben Franklin Station
> Washington, D.C. 20044;
>
> 2) United States Attorney as specified in LBR 2002-1(a) above; and
>
> 3) Internal Revenue Service at the addresses specified on the Roster of Governmental Agencies maintained by the Clerk.

Per Debtor's Certificate of Service, the Internal Revenue Service was not properly served. That failure to provide notice violates Federal Rule of Bankruptcy Procedure 2002(b).

Debtor filed a Response on July 21, 2021. Dckt. 87. Debtor seems to state that the Internal Revenue Service was properly served where the documents were filed to

> INTERNAL REVENUE SERVICE CENTRALIZED INSOLVENCY
> OPERATION PO BOX 7346 PHILADELPHIA PA 19101-7346.

Id., at 1.

Proper service to the Internal Revenue Service according to the local rules requires that Debtor serve the parties as listed above, which are:

> 1) United States Department of Justice
> Tax Division
> Civil Trial Section, Western Region
> Box 683, Ben Franklin Station
> Washington, D.C. 20044;
>
> 2) United States Attorney as specified in LBR 2002-1(a) above; and
>
> 3) Internal Revenue Service at the addresses specified on the Roster of Governmental Agencies maintained by the Clerk.

Thus, proper service has not been provided.

Amended Schedule J - Car Payment

Trustee notes that Debtor's Amended Schedule J reflects, on line 17a., a car payment of $385.00. This payment is not reflected in the plan and is not listed on the Schedule J filed with the petition.

A review of the Schedule J filed with the petition shows the original line 17a. reflected a car payment of $480. This was listed as a Class 4 claim on Debtor's confirmed plan. Dckt. 11. This was the lease payment for a vehicle, which creditor, Honda Financial, sought and was granted relief from the automatic stay. Dckt. 39. An amended Proof of Claim from Honda Financial shows that after the vehicle was sold at auction, Debtor's remaining balance on the lease was $2,985.77. Amended Proof of Claim 1-2.

At this point, the court is uncertain whether the Debtor purchased a new vehicle without leave from this court, or if the $385.00 payment on the Amended Schedule J is payment for the remaining balance on the Honda Financial lease.

In Debtor's Response (no testimony by Debtor as to these "facts"), Debtor explains that this expense is not new debt, "but rather a monthly amount the Debtor pays her mother for the use of the mother's vehicle. Debtor does not have a contract with her mother and as such, has not incurred any new debt." Response, ¶ 3.

These payments are made to a mother who is dependent on the Debtor and for whom Debtor

is providing extensive care services. If counsel's statement that "Debtor does not have a contract with her mother, and as such, has not incurred any new debt" is true, then Debtor does not need to pay her mother $385 a month. Thus, based on Debtor's argument, Debtor is giving a $385 monthly gift to her mother rather than paying her debts.

The Trustee is satisfied with the Debtor's response, resolving this issue.

Failure to Comply with Local Rule 9041-1 (c)(3)

The Debtor's use of "CDL-61521" as a docket control number does not comply with Local Rule 9014-1 (c)(3).

Debtor apologizes for the error in the docket control number and will make a conscientious effort to use the proper format going forward. Response, ¶ 4.

Counsel for Debtor requested a continuance so these issues can be addressed. The Trustee did not oppose a continuance of the hearing.

September 14, 2021 Hearing

Debtor filed a new Motion to Modify the Plan on August 9, 2021, Dckt. 92. The new Motion replaces this one, rendering the first Motion Moot.

The Motion is dismissed 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 Confirm Modified Plan filed by Felicia Hicks, the Debtor, having been presented to the court, Debtor having filed a subsequent Motion to Confirm Modified Plan (CDL:22) which renders the present Motion Moot, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is dismissed without prejudice.

12. **20-21211-E-13 DPC-1** **FELICIA HICKS** **Colby LaVelle** **CONTINUED MOTION TO DISMISS CASE** **2-3-21 [43]**

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on February 3, 2021. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is xxxxx.

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Felicia Lynn Hicks ("Debtor"), is delinquent in plan payments.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on February 17, 2021. Dckt. 47. Debtor lists several factors for her inability to make the monthly Chapter 13 plan payments: family illness and missed work for care; lost IHSS income; and furlough from primary employment. *Id.* at ¶ 2. Debtor intends to amend Schedules I and J to provide an accurate amount of disposable income. *Id.* at ¶ 4. Debtor intends to amend the plan to increase from 36 to 46 monthly payments. *Id.* at ¶ 5. Debtor adjustments will allow make-up of missed payments and completion of the Chapter 13 plan within the maximum 60 months. *Id.* at 2:23.

DISCUSSION

Delinquent

Debtor is $2,150.00 delinquent in plan payments, which represents multiple months of the $450.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Counsel for Debtor reported that the Plan and Motion were filed late on March 2, 2021. The Trustee did not oppose the request for a continuance while the Debtor prosecuted the Motion to Confirm.

On May 13, 2021, the court ordered the hearing on this Motion to Dismiss continued to 2:00 p.m. on September 14, 2021. Dckt. 90.

September 14, 2021 Hearing

Debtor's Motion to Confirm, Dckt. 92, was ~~granted / denied~~.

At the hearing xxxxxxxx

13. 18-21317-E-13 GEL-1 — AMBER HORTON, Gabriel Liberman — MOTION TO MODIFY PLAN — 8-2-21 [61]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 2, 2021. By the court's calculation, 43 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 xxxxx.

The debtor, Amber Marie Horton ("Debtor") seeks confirmation of the Modified Plan to cure default in plan payments after encountering decreases in net income along with changes to living expenses. Declaration, Dckt. 63. The Modified Plan provides for plan payments of $433.00 per month for months 41 through 60 (August 2021 - March 2023), and a 13 percent dividend to unsecured claims totaling $32,634.12. Modified Plan, Dckt. 65. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on August 24, 2021. Dckt. 69. Trustee opposes confirmation of the Plan on the basis that Debtor may not be able to pay.

DISCUSSION

Failure to Afford Plan Payment / Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). According to Trustee, Schedule I, Dckt. 60, indicates that Debtor has a monthly gross income of $6,325.22 and monthly net income of $5,205.88, where as the paycheck stubs filed in support of the motion reflect average gross monthly income of $6,325.22 and average net monthly income of $4,750.16. Trustee also notes that the pay stubs states an annual pay of $99,340.80 or $8,278.40 monthly, which is $1,953.18 more monthly than reflected on Schedule I.

Moreover, Trustee notes that the pay stubs reflect 37.75 hours of unpaid leave for the 160-hour period which Debtor has failed to address in her declaration.

Lastly, Trustee notes that in her Declaration, Debtor testifies that she is current in domestic support obligations; yet, Debtor's Schedule I does not reflect a domestic support obligation on line 5f.

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

Debtor filed a Supplemental Declaration on August 31, 2021 clarifying the following:

1. The 37.75 hours of unpaid leave in a 160-hour pay period is due to suffering from health issues that sometimes keep her working and occasionally require surgery and although it is not certain that this will be "normal" in Debtor's life or predictable, Debtor testifies that the numbers submitted on Supplemental Schedules I and J were what Debtor felt to be historically correct and accurate for when she is intermittently unable to work.

2. When her health issues require surgery, Debtor receives disability pay of $1160 per week, which when calculated monthly comes to $5,026.00 monthly. Adding that this estimate is not much different from the $5,208.88 submitted in my supplemental I and J, and the differences can be covered by reducing transportation and meals when Debtor is not going to work.

3. As to the domestic support obligation, Debtor explains that she thought listing the obligation as an expense rather than as a deduction was appropriate.

Dckt. 72.

At the hearing xxxxxxxx

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

~~and is not confirmed.~~

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Amber Marie Horton ("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 xxxxx.

14. **19-25318-E-13** **SHAUNA JEAN** **MOTION TO DISMISS CASE**
TDD-4 **Lyle Solomon** **8-27-21 [75]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice and Office of the United States Trustee on August 27, 2021. By the court's calculation, 18 days' notice was provided. 14 days' notice is required.

The Motion to Dismiss 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 Dismiss is granted, and the case is dismissed.

The Chapter 13 Debtor, Shauna Tara Jean ("Debtor"), pursuant to 11 U.S.C. §1307(b), seeks dismissal of the case on the basis that she has decided to attempt to cure her debts outside the bounds of this chapter 13 case

TRUSTEE'S NON-OPPOSITION

Trustee filed a Non-Opposition on September 1, 2021 requesting the court take into consideration that Debtor testifies to the ability to manage her debt on her own. Dckt. 79.

DISCUSSION

The Bankruptcy Code provides:

> On request of the debtor at any time, if the case has not been converted under section 706, 1112, or 1208 of this title, the court shall dismiss a case under this

chapter. Any waiver of the right to dismiss under this subsection is unenforceable.

11 U.S.C. § 1307(b).

Here, the Trustee does not oppose the dismissal. No other party in interest has filed an Opposition. Debtor also testifies that she is at a point where can manage her debt and will pay all of her creditors after her case is dismissed.

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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 Dismiss the Chapter 13 case filed by the Chapter 13 Debtor, Shauna Tara Jean ("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 Dismiss is granted, and the case is dismissed.

15. **20-25523-E-13 RPH-4** **THOMAS KNOERNSCHILD** **Robert Huckaby** **MOTION TO CONFIRM PLAN** **8-16-21 [79]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 16, 2021. By the court's calculation, 29 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Plan is denied.

The debtor, Thomas Edwin Matlock Knoersnschild ("Debtor") seeks confirmation of the Chapter 13 Plan. The Plan provides for plan payments of $318.00 for 60 months, and a zero (0) percent dividend to unsecured claims totaling $14,000.00. Plan, Dckt. 81. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee") filed an Opposition on August 31, 2021. Dckt. 86. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor is delinquent.

B. The Plan is overextended.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is $538.00 delinquent in plan payments, which represents 1.5 months of the $318.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Failure to Complete Plan Within Allotted Time

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in 65 months due to claims being filed for amounts higher that the Debtor scheduled.

Unfortunately, the Trustee does not state with particularity the amount of the unsecured claims scheduled, the amount of claims filed, and the comparative analyses showing this computation. Opposition (which is titled as "Objection," which is a term of legal art in this District to when a trustee or party in interest is filing an objection to confirmation the original proposed plan that is timely filed, L.B.R. 3015(c)(4), as opposed to an "Opposition" to a motion to confirm a Chapter 13 Plan, L.B.R. 3015(d).) Dckt. 86.

The Trustee not providing the court with evidence in support of the Opposition's conclusions, nor an analysis stating the basis and citing the court to documents in the court's file, the Opposition based on over extension is overruled. (Though overruled, such does not insure Debtor that this case does not get dismissed at 60 months, the maximum term allowed due to the Plan failing to properly provide for the general unsecured claims that are filed. Additionally, such would be appear to be foreseeable, and as such, not be a situation in which counsel would be allowed additional fees for a motion to confirm to modify the Plan which turns out fails to be sufficiently funded).

The Debtor being in default in the Plan payments, the Plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the debtor, Thomas Edwin Matlock Knoernschild ("Debtor"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Confirm the Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

16. 21-22523-E-13 DPC-1 — MAVIAN/ROSANNE NEAL, Mikalah Liviakis — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK, 8-18-21 [21]

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 August 18, 2021. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. The Plan does not provide for the cure of the default on the mortgage.

B. Debtors may not be able to make the Plan payment or the plan payment may not be the Debtors' best efforts.

C. Debtor will not make the first payment until the end of September.

DISCUSSION

Trustee's objections are well-taken.

Failure to Cure Arrearage of Creditor

Creditor Flagstar Bank holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts $7,578.05 in pre-petition arrearages. 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.

Not Best Effort

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

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

Trustee asserts that Debtor should pay their tax refunds into the Plan, where Debtor Roseanne Neal received a federal refund of $6,812.00 and a state refund of $2,273, for a total of $9,085.00. According to Trustee, this additional income is not reflected in Debtor's budget.

Trustee argues that Debtor are above the median income. Yet, the plan proposes to pay a 3.50% dividend to unsecured creditors over sixty (60) months. Because, Debtor may have additional disposable income to pay toward the plan, Trustee believes that Debtor should increase dividend of 6.50% dividend to unsecured creditors and put any combined tax refunds totaling $2,000.00, or more, starting with the 2021 tax year into the plan.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

17. **19-20825-E-13 SLE-9** | **PIOTR/CELESTIAL REYSNER** **Steele Lanphier** | **OBJECTION TO CLAIM OF ALLIED TRUSTEE SERVICES, CLAIM NUMBER 10** **7-20-21 [150]**

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 3007-1 Objection to Claim—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Chapter 13 Trustee, and Office of the United States Trustee on July 20, 2021. By the court's calculation, 56 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). 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 Proof of Claim Number 10-1 of Allied Trustee Services is sustained to the extent that it asserts a secured claim, and overruled as to all other relief requested.

Piotr Gabriel Reysner and Celestial Olivia Reysner, the Chapter 13 Debtor, ("Objector") requests that the court disallow the claim of Allied Trustee Services ("Creditor"), Proof of Claim No. 10-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of $4,724.86. Objector asserts that the claim is in fact not secured on the basis that Debtor did not own real property at the time the judgment was recorded or at the time of filing the instant bankruptcy case and Creditor has failed to provide evidence of a security interest.

The Objection states that the Claim should be:

1. "rejected in its entirety;"

2. "be deemed a general unsecured non-priority debt," and

3. "the court determine that the claim is in fact not secured and order that the lien upon which this claim arises be ordered from the public record upon entry of the Chapter 13 Discharge in this matter."

Objection, ¶¶ 1, 2; Dckt. 150.

The Objection continues stating that Debtor (under penalty of perjury) has scheduled this as an unsecured debt which is based upon a judgment (indicating that it would not be in *bona fide* dispute). *Id*., ¶ 5.

Debtor states that the property to which this debt relates was foreclosed on in 2014, five years prior to Debtor filing bankruptcy. *Id*.

Debtor states that the claim, which is based on a final judgment, is "invalid" because Debtor's property was foreclosed on and the lien does not attached to property acquired after Debtor, at some future date if the Chapter 13 Plan is fully perform, obtains a bankruptcy discharge.

A copy of Creditor's Proof of Claim, No. 10-1, is provided as Exhibit A. Dckt. 153. In Proof of Claim 10-1 Creditor states that the obligation of $4,724.86, is based on a judgment, and has a lien (not on real property) based on an abstract of judgment and is "perfected" because it is an abstract of judgment.

Attachment 4 to Proof of Claim 10-1 is a copy of the abstract of judgment which was recorded with the Sacramento County Recorder. The recording date is January 24, 2017.

Debtor has provided a copy of the Schedule A/B filed in this case. Exhibit C, Dckt. 153. Debtor states under penalty of perjury that Debtor has no interest in any real property.

DISCUSSION

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

Once a party has objected to a proof of claim, the creditor asserting the claim may not withdraw the claim except on order of the court. FED. R. BANKR. P. 3006.

Debtor argues that at the time of filing the Bankruptcy Petition and at the time of the recording of the lien, Debtor did not own real property to which a lien could attach. Further, that it cannot attach to property acquired after the bankruptcy. Thus, pursuant to 11 U.S.C. § 524, the judgment will be considered discharged as to a personal obligation.

Debtor cites to *In Re Thomas* for the proposition that there is precedent in this district which has decided that an Abstract of Judgment did not result in a lien because the debtor in that case had no interest in real property at the time of filing through discharge; finding that since the judgment did not and could not attach to any real property at the time of the bankruptcy, the "lien" was ordered void the record expunged. *In Re Thomas*, 102 B.R. 199 (Bankr. E.D.Cal. 1989).[Fn.1.]

FN. 1. The decision in *In Re Thomas* is thirty-two (32) years young. It was prior to the 2007 amendment to Federal Rule of Bankruptcy Procedure 3007 prohibiting "[a] party in interest from including in a claim objection a request for relief that requires an adversary proceeding. A party in interest may, however, include an objection to the allowance of a claim in an adversary proceeding. Notes of Advisory Committee on 2007 Amendments.

In *In Re Thomas*, debtors had been previously discharged in bankruptcy, but moved the bankruptcy court to reopen their cases and avoid a creditor's lien allegedly arising from a judgment recorded by the creditor prior debtor's filing their case, which attached to escrow proceeds from sale of a house debtors acquired after discharge. The bankruptcy court held

> Working chronologically, this court finds that no lien could have existed as a matter of law on the date the Debtors filed their respective petitions in bankruptcy because of the absence of attachable property at that date. Conversely, no judgment lien could have been created post-discharge even though the Debtors had acquired attachable property because the underlying judgment was previously discharged and rendered void. 5 [**6] Consequently, this court must find that the FTC lien currently encumbering the proceeds from sale of the Debtors' residence is void and unenforceable. 6 (See e.g., *In re Yates*, 47 B.R. 460, 462 (D.Colo. 1985) (when underlying judgment is discharged before "res" exists upon which the "lien" could attach, no subsequent basis for a lien exists).

In re Thomas, 102 B.R. 199, 201 (Bankr. E.D. Cal. 1989).

Here, the court finds itself with similar circumstances. Debtor testifies not owning any property prior to the bankruptcy filing.

The court turns to a review of the filed proof of claim. In question 9 of the form, Creditor asserts that the $4,724.86 claim is secured as follows:

Other. Describe: ABSTRACT OF JUDGMENT

Basis for perfection: ABSTRACT OF JUDGMENT

Proof of Claim 10-1 at 2. An abstract of judgment is a security instrument. This abstract, when recorded, creates a lien on the real property of the judgment debtor. It is not in itself what "secures" the claim. What secures the lien is the property of the debtor, specifically real property. Debtor did not and does not own any real property to which this lien could attach to.

The California Code of Civil Procedure section 697.340, addressing judgment liens on real property provides:

> Except as provided in Section 704.950:
>
> (a) A judgment lien on real property attaches to all interests in real property in the county where the lien is created (whether present or future, vested or contingent, legal or equitable) that are subject to enforcement of the money judgment against the judgment debtor pursuant to Article 1 (commencing with Section 695.010) of Chapter 1 at the time the lien was created, but does not reach rental payments, a leasehold estate with an unexpired term of less than two years, the interest of a beneficiary under a trust, or real property that is subject to an attachment lien in favor of the creditor and was transferred before judgment.
>
> (b) If any interest in real property in the county on which a judgment lien could be created under subdivision (a) is acquired after the judgment lien was created, the judgment lien attaches to such interest at the time it is acquired.

C.C.P. § 697.340. Thus, Creditor's abstract of judgment did not create a lien where there is no real property. There being nothing to attach to, the debt is not void; simply the classification changes.

The court sustains the objection to the claim as a "secured claim," determining that the claim is an unsecured claim.

Additional Relief Requested Not Permitted by Objection (Contested Matter)

The Objection requests additional relief in this Contested Matter. Debtor requests that this court determine that the claim is not secured and issue injunctive relief that the lien must be removed from the public record (not clear whether the court is to order the creditor or the County) when the Debtor obtains a discharge. Objection, ¶ 2 Additional Relief Requested, Dckt. 150.

The court has sustained the objection as to the claim being a secured claim which is requested in Paragraph 1 of the Objection. *Id*. It appears that this second request is in the nature of the court adjudicating the extent, validity, and priority of any lien pursuant to the abstract of judgement. Debtor also requests injunctive relief against unidentified persons.

Such determination of the extent, validity, and priority of a lien, and injunctive relief must be sought in a contested matter. Fed. R. Bankr. P. 7001. When an objection to claim includes relief for

which an adversary proceeding is required, then the objection to claim must also be part of the adversary proceeding. Fed. R. Bankr. P. 3007(b). Thus, by including relief which must be requested through an adversary proceeding, the court could construe this as a defective pleading to be denied without prejudice. The court chooses to instead deny such additional relief without prejudice.

Debtor may be concerned that if Debtor has to wait until Debtor obtains a discharge to have Debtor's counsel firmly, but professionally, demand that Creditor release the lien from the public record, the Debtor will be at the mercy of a well funded creditor. Such is incorrect, as the Bankruptcy Code and State Law provide Debtor with a sword that rivals that of the hammer wielded by Thor, the God of Thunder.

If Creditor were to fail to release the lien and cloud title in violation of the discharge injunction, Debtor could seek to have Creditor held in contempt, pay actual damages and sanctions. Debtor could also look to applicable state law for the duties of a creditor to release a lien when it no longer secures an enforceable obligation (with the obligation against Debtor becoming unenforceable upon entry of the discharge).

The Objection is overruled without prejudice as to all other relief requested.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Allied Trustee Services ("Creditor"), filed in this case by Piotr Gabriel Reysner and Celestial Olivia Reysner, the Chapter 13 Debtor, ("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 the Objection to Proof of Claim Number 10-1 of Creditor is sustained and the claim is disallowed as a secured claim, with the obligation asserted in Proof of Claim 10-1 determined to be a general unsecured claim in this case.
>
> **IT IS FURTHER ORDERED** that all other relief requested in the Objection to Claim is overruled without prejudice.
>
> Attorney's fees and costs, if any, shall be requested as provided by Federal Rule of Civil Procedure 54 and Federal Rules of Bankruptcy Procedure 7054 and 9014.

18. **19-22933-E-13 SLE-3** **MATTHEW RUBB** **Steele Lanphier** **CONTINUED MOTION TO MODIFY PLAN** **6-23-21 [62]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on June 23, 2021. 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 xxxxx.

The debtor, Matthew Kent Rubb ("Debtor") seeks confirmation of the Modified Plan to account for Debtor's fiancée losing employment and now having a child. Declaration, Dckt. 64. The Modified Plan provides:

1. Debtor will skip up to six (6) plan payments (July 2021 through December 2021)

2. And unless Debtor resumes sooner, plan payments of $300.00 commencing January 2022 through completion of the plan, and

3. a zero (0) percent dividend to unsecured claims totaling $12,350.00.

Modified Plan, Dckt. 66. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on July 26, 2021. Dckt. 68. Trustee opposes confirmation of the Plan on the basis that:

A. The Plan fails to state the amount paid and proposes to skip plan payments.

B. The Plan exceeds the amount of time allowed by the Bankruptcy Code.

DISCUSSION

Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). According to Trustee, he is unable to administer the plan where the debtor does not state an amount paid. The debtor proposes to skip up to an additional 6 plan payments (July 2021 through December 2021) unless debtor resumes making payments earlier. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Failure to Complete Plan Within Allotted Time

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in 70 months due to where priority claims including trustee fees owed total approximately $11,410.00 and at Debtor's proposed payment plan of $300.00 would take an additional 39 months. The debtor will have completed 31 months as of December 2021. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

At the hearing, Debtor requested to extend the plan based on the COVID-19 pandemic. The court continues the hearing to allow the Debtor and Trustee to "work on the numbers."

September 14, 2021 Hearing

No further pleadings have been filed for this motion.

At the hearing xxxxxxxx

19. 19-24867-E-13 TLA-1 — JWYANZA BROUSSARD AND ELECTA GREER BROUSSARD — MOTION TO MODIFY PLAN 7-28-21 [81]
Thomas Amberg

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on July 28, 2021. 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 xxxxx.

The debtors, Jwyanza Adisa Broussard and Electa Jeanee Greer-Broussard ("Debtor") seek confirmation of the Modified Plan to account for missed payments due to COVID-19 affecting Mrs. Greer-Broussard's income. Declaration, Dckt. 83. The Modified Plan provides payments of $775.00 for the remainder of the plan, and a zero (0) percent dividend to unsecured claims totaling $74,076.40. Modified Plan, Dckt. 85. 11 U.S.C. § 1329 permits a debtor(s) to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee") filed an Opposition on August 30, 2021. Dckt. 90. Trustee opposes confirmation of the Plan on the basis that Debtors is delinquent.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtors are $775.00 delinquent in plan payments, which represents one month of the $775.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor filed a response on September 8, 2021 explaining that Debtor thought the payment was due September 25, 2210 instead of August 25, 2021 and that once Trustee raised the objection, Debtor immediate scheduled a payment for the delinquent amount. Dckt. 93

At the hearing xxxxxxxx

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by the debtors, Jwyanza Adisa Broussard and Electa Jeanee Greer-Broussard ("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 xxxxx.

20. **21-22968-E-13 CYB-1** **BOUALY XIONG** **Candace Brooks** **MOTION TO EXTEND AUTOMATIC STAY** **8-31-21 [10]**

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 not Provided. No Proof of Service was filed for this pleading. Therefore, the court is unable to determine whether proper service was rendered.

At the hearing xxxxxxxx

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~~.

Boualy Xioung ("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. 20-21494) was dismissed on June 21, 2021, after Debtor failed to make timely plan payments to the Chapter 13 trustee. *See* Order, Bankr. E.D. Cal. No. 20-21494, Dckt. 28, June 21, 2021. 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 due to significant financial hardships and loss of income from state furloughs as a result of COVID-19 and her sister no longer contributing rent.

Trustee does not oppose the relief requested. Dckt. 17.

DISCUSSION

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

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

A. Why was the previous plan filed?

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

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

Debtor has sufficiently demonstrated the case was filed in good faith/rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

~~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 an order substantially in the following form holding that:~~

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

~~The Motion to Extend the Automatic Stay filed by Boualy Xioung ("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.~~

21. **19-20975-E-13 GEL-3** | **INOCENTE SALINAS** **Gabriel Liberman** | **MOTION TO MODIFY PLAN** **8-2-21 [51]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on August 2, 2021. By the court's calculation, 43 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 xxxxx.

The debtor, Inocente Salinas ("Debtor") seeks confirmation of the Modified Plan to account for Debtor's mistaken belief the Debtor had regarding his family support payment of $1,400.00 per month terminating completely in April 2022, which will allow for a plan payment increase beginning May 2022. Declaration, Dckt. 53. The Modified Plan provides:

1. payments of $581.00 per month for months 1 - 38 [March 2019 - April 2022];

2. payments of $1981.00 per month for months 39 - 46 [May 2022 - December 2022]; and

3. a one-hundred (100) percent dividend to unsecured claims totaling $25,957.64.

Modified Plan, Dckt. 55. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on August 30, 2021. Dckt. 59. Trustee opposes confirmation of the Plan on the basis that Debtor has not filed supplementals Schedules I and J.

DISCUSSION

Failure to File Supplemental Schedule I and J

The Chapter 13 Trustee argues that Debtor has failed to file a recent Schedule I and J. Debtor's last Schedules were filed in 2019. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Inocente Salinas ("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 xxxxx.

22. **21-20775-E-13 PSB-3** | **JOSEPH/MARTHA ESPANA** **Paul Bains** | **CONTINUED MOTION TO CONFIRM PLAN** **6-22-21 [57]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 22, 2021. By the court's calculation, 49 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is ~~granted~~.

The debtors, Joseph Humberto Espana and Martha Eugenia Espana ("Debtor"), seek confirmation of the Amended Plan. The Amended Plan provides for plan payments of $6,920.00 for months 3 and 4; followed by monthly plan payments of $6,941.79 for months 5 through 60; and a 100% dividend to unsecured claims totaling $14,285.84. Amended Plan, Dckt. 61. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on July 26, 2021. Dckt. 64.

CREDITOR'S OPPOSITION

JPMorgan Chase Bank, N.A. ("Creditor") holding a secured claim over commercial real property commonly known as 1107 N. Commerce Avenue, Stockton, California ("Property") filed an Opposition on July 27, 2021. Dckt. 67. Creditor opposes confirmation of the Plan on the basis that:

A. Debtor have failed to make all Loan payments owing since April 1, 2020 through the petition date in the aggregate amount of $27,898.01 (inclusive of accrued interest, late fees, trustee fees and legal fees, less credit given for unapplied payments), as set forth in Creditor's Proof of Claim 7-1.

B. Creditor is concerned that the Debtor have not addressed in the Plan how they will properly maintain the Property after Creditor learned that there are unconsented liens recorded by the city of Stockton over the Property due to code violations.

Creditor requests that any Plan ensure the insurance and property taxes secured against the Property are timely paid and maintained.

Creditor has filed a series of documents from the County Recorder's Office in support of the Opposition. These have not been authenticated, either by a witness or as provided in Federal Rules of Evidence 901 et seq. It is not clear how these recorded documents are ones for which judicial notice can be given:

> a) Scope. This rule governs judicial notice of an adjudicative fact only, not a legislative fact.
>
> b) Kinds of Facts That May Be Judicially Noticed. The court may judicially notice a fact that is not subject to reasonable dispute because it:
>
> > (1) is generally known within the trial court's territorial jurisdiction; or
> >
> > (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

Fed. R. Evid. 201. The court cannot conclude that these "adjudicative facts" consisting of the records of a county recorder are "generally known within the trial court's territorial jurisdiction." As to such being readily determined from sources, it is unclear how the records of a county recorder can be "readily determined."

In addition to authentication by a witness, the Supreme Court provides in Federal Rule of Evidence 902 that records like this can be self-authenticating when a certified public record.

DISCUSSION

Failure to Address Property Taxes and Insurance

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). According to Creditor, the city of Stockton has recorded code enforcement liens and notice of violation over the Property. Creditor argues that Debtor have neither demonstrated that the code

violations on the Property have been remediated and any resultant liens released, nor that their violations have been abated. Creditor is concerned that the Debtor have not addressed in the Plan how they will properly maintain the Property.

A review of Debtor's operating budget fails to account for the property taxes and insurance on the Property.

The Plan lists the secured claim of "Chase" with a $27,898.01 pre-petition arrearage to be paid as a Class 1 Claim. Amended Plan, Dckt. 61 at 3. This arrearage is to be paid $481.00 a month for months 3 through 60 of the Plan. Amended Plan, § 7.02; *Id*. at 7.

On Schedule I, Debtor states that neither of the debtors are employed, with their income consisting of $2,827 from rental of property or operation of a business, $1,116 and $1,769 in Social Security monthly, $436.22 and $535.67 from annuities, and $6,018.68 retirement income. Dckt.43. Debtor's monthly income totals $12,702.57, which is $152,430 in annual income.

The Projected Rental Income and Expenses attached to Schedule I projects $6,600 in monthly rental income, ($3,773) in expenses, and $2,827 in net monthly rental income (before payment of the secured claim). *Id*. at 5.

On Schedule J Debtor lists $587.50 as monthly tax withholding from retirement pay. *Id*. at 7. This $587.50 provides for $7,050.00 to be applied to Debtor's federal and state income taxes on the $152,430 in annual income. No other amounts are provided for payment of any taxes on Schedule J.

Even if the mortgage payments significantly reduce the $2,827 income from the rental of the properties by Debtor, that still leaves $118,500 in income, for which Debtor is only withholding $587 a month. It is not clear that this would be sufficient.

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

Debtor Declaration

Debtor filed a Declaration on August 24, 2021 testifying that the budget filed with the court is accurate and that they are confident they will not be effected by additional tax payments since they have consistently received refunds due to their rental properties having enough deductions. Dckt. 76. Debtor also provides a breakdown of their taxes for the past 3 years, which Debtor testifies shows that they have been receiving refunds regularly without making quarterly payments on their tax obligations. *Id.*

Trustee's Status Report

Trustee filed a Status Report on September 7, 2021 informing the court that Debtor has slight delinquency of $327.79 and further explaining that because Debtor filed payments separately it causes them to be partially delinquency and at times the Trustee receives the payment untimely. Dckt. 77. Trustee also notes that according to the Amended Schedules, Debtor increased rental expenses and decreased rental income, consequently decreasing Debtors' income from $7,914.86 to $6,978.81 per

month. *Id.* Yet, Debtor's plan payment is $6,941.79 per month.

Lastly, Trustee notes that JPMorgan Chase Bank, withdrew its objection to confirmation to the First Amended Plan on August 10, 2021. See Notice of Withdrawal, Dckt. 72.

September 14, 2021 Hearing

At the hearing xxxxxxxx

~~The proposed First Amended Chapter 13 Plan complies with 11 U.S.C. § 1322, § 1325, and; the Motion is granted and the Plan is confirmed.~~

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

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

~~The Motion to Confirm the First Amended Chapter 13 Plan filed by the debtors Joseph and Martha Espana ("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 First Amended Chapter 13 Plan filed on June 22, 2021, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

23. **19-27777-E-13** **YVONNE RICHARDS** **MOTION TO MODIFY PLAN**
PGM-4 **Peter Macaluso** **7-30-21 [97]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 30, 2021. By the court's calculation, 46 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.

The debtor, Yvonne Richards ("Debtor") seeks confirmation of the Modified Plan because that her daughter has moved in with to help with the finances and insure that she makes the payments required by the Plan. Declaration, Dckt. 99. The Modified Plan provides payments of $3,655.00 for 41 months, and a 100 percent dividend to unsecured claims totaling $2,094.27. Modified Plan, Dckt. 101. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on August 30, 2021. Dckt. 106. Trustee opposes confirmation of the Plan on the basis that:

A. Trustee cannot comply with § 3.07(b) of the Plan.

B. Debtor's Schedules I and J may not be an accurate reflection of her income.

DISCUSSION

Post-Petition Arrearage

Trustee asserts that due to Debtor's failure to make plan payments, Trustee has been unable to make Class 1 creditor Fay Servicing/Cenlar FSB installment payments as follows: $1,708.59 for the month of December 2020, $1,746.97 for the month of February 2021, then $1,727.78 for the months of March through May, 2021. Trustee's accounting shows that the amount due for the unpaid installments is $8,638.90 for the property. While the Plan attempts to cure such post-petition arrearage, the Plan only provides for $8,619.71 and it does not specify which months were missed. Thus, Trustee is unable to fully comply with Section 3.07 of the Plan.

Debtor filed a Reply on September 7, 2021 agreeing with Trustee's amounts as to the missed mortgage payments and requests that the order confirming the plan include the following language:

> Class 1 claim of Cenlar FSB for postpetition arrears is allowed in the amount of $8,638.90.

Reply, Dckt. 110.

Supplemental Schedule I and J

The Chapter 13 Trustee argues that the Supplemental Schedules I and J may not be accurate representation of Debtor's current income and expenses. Trustee also notes that the Schedules were filed as both Amended and Supplemental. According to Trustee, Debtor's Schedules I, reflects an increase in her monthly net income from $5,429.50 to $5,944.50, to include her daughter's monthly contribution of $515.00. Debtor's current and prior Schedule I (Dckt. 1) indicate Debtor's son contributes $3,115.00 each month, when the supporting Declaration of Michael Richards reflects the monthly contribution to be $3,000.00. Yet, Trustee notes that although daughter now resides with Debtor, the Supplemental Schedule J does not reflect changes in expenses. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

In the Reply, Debtor's Counsel apologizes for checking both boxes as Amended and Supplemental and corrected Schedules were filed on September 7, 2021. See Dckt. 109. In her Supplemental Declaration, Debtor explains that her daughter's expenses have not been included as part of her Schedule J expenses because her daughter will be contributing to the household but will be paying her own expenses; therefore, Debtor's expenses remain the same. Dckt. 111. In support of confirmation, Debtor filed the Declaration of Michael Richards. Dckt. 112. Debtor's son testifies that he will be contributing (as a gift) sufficient funds to make the Plan payments. *Id.*, ¶ 2.

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

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Yvonne Rose Richards ("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 30, 2021, as amended

> Class 1 claim of Cenlar FSB for postpetition arrears is in the amount of $8,638.90.

is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

24. 21-22489-E-13 DPC-1 JAIME/JOSEPHINE UMALI Timothy Walsh OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 8-23-21 [20]

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 August 23, 2021. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. The Chapter 13 debtors, Jaime Galgana Umali and Josephine Dial Umali ("Debtor"), are delinquent on plan payments.

B. The Plan may not be feasible.

Trustee filed an Objection on August 23, 2021 after Debtor failed to appear at the Meeting of Creditors. The Meeting was continued to September 2, 2021. On September 7, 2021, Trustee filed a Status Report maintaining his Objection pursuant to 11 U.S.C. § 1325(b) and adding new grounds for the Objection. Dckt. 24. The court discusses the objections raised on the Status Report.

DISCUSSION

Trustee's objections are well-taken.

Delinquency

Debtors are $1,692.00 delinquent in plan payments, which represents one month of the $1,692.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Feasibility

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). According to Trustee, Debtor Josephine testified at the Meeting of Creditors that she retired and no longer received the wages as listed in Schedule I. Additionally, Trustee points the court to Debtor's Statement of Financial Affairs which Debtors have failed to disclose wage income for 2021 and gambling winnings or losses for 2021.

Additionally, the Internal Revenue Service filed a claim for $97,075.03 in secured debt, which is not provided for in the proposed Plan. Proof of Claim 4, filed on August 24, 2021. The Plan does not provide for all priority debt. Therefore, the Plan is not feasible as it does not accurately reflect the Debtor's amount of debt.

The Trustee also notes that Debtor's Schedule J, line 17a, identifies a $900.00 monthly car payment expense. However, according to Trustee, at the Meeting of Creditor, Debtor testified that they are surrendering the 2020 Mercedes listed as Vehicle One (1). Debtor also admitted to owning a 1992 BMW which was not listed on Schedule A/B.

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

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

25. 21-20890-E-13 MRL-2 — HAYDEN/MANDY COIT — Mikalah Liviakis — MOTION TO CONFIRM PLAN — 7-22-21 [35]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 23, 2021. By the court's calculation, 53 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

The debtors, Hayden Scott Coit and Mandy Erin Coit ("Debtor"), seek confirmation of the Amended Plan. The Amended Plan provides for:

1. $2,900.00 per month for 3 months;

2. $6,422.00 per month for 10 months;

3. $7,200.00 per month for 47 months; and

4. A zero (0) percent dividend to creditors with unsecured claims totaling $101,647.00.

Amended Plan, Dckt. 37. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CREDITOR'S OPPOSITION

Deutsche Bank National Trust Company ("Creditor") holding a secured claim filed an Opposition on August 18, 2021. Dckt. 48. Creditor opposes confirmation of the Plan on the basis that:

A. The Plan fails to state who will be making payments for months one (1) through three (3) of the plan.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on August 23, 2021. Dckt. 50. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor may not be able to make plan payments.

B. Debtor is delinquent.

C. Plan fails to state who will be making the mortgage payments for the first three months of the plan and may fail to cure the arrears.

DISCUSSION

Failure to Complete Plan Within Allotted Time

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in 78 months due to a higher amount in claims having been filed than what was account for by Debtor. The Plan estimate $37,160.00 in priority claims, but $68,36.69 have been filed, (See Proofs of Claim 15 & 31). The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

However, the Trustee notes that the Internal Revenue Service ("IRS") claim (Proof of Claim 15) may be lowered where the 2020 tax returns, on August 6, 2021, which indicate Debtor only owe $18,881.00, not $52,884.23, to the IRS and $3,498 to the Franchise Tax Board. Trustee estimates the Plan will complete in 60 months, paying a dividend of approximately 25% (~$34,000) to unsecured creditors if the tax returns are accurate.

Delinquency

The Chapter 13 Trustee asserts that Debtor is $1,761.00 delinquent in plan payments, which represents a portion of one month of the $2,900.00 plan payment. Trustee does note that there are two scheduled electronic payments, one for August 26, 2021 for the amount $1,761.00, and a second one scheduled for September 15, 2021 in the amount of $6,422.00. Before the hearing, another plan payment will be due. According to the Chapter 13 Trustee, the Plan in § 2.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13.

Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11

U.S.C. § 1325(a)(6).

At the hearing xxxxxxxx

Failure to Pay Mortgage

Creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts $6,520.70 in pre-petition arrearages. Amended Proof of Claim 14-2. The Plan does not provide for the mortgage payments for the first three months of the Plan.

Debtor filed a Response to Creditor's Objection on September 7, 2021. Dckt. 53. In the response, Debtor asserts that to resolve the issue regarding the missing post-petition payments, Creditor shall be paid $179.61 per month starting month 4 of the Plan.

At the hearing xxxxxxxx

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Hayden Scott Coit and Mandy Erin Coit ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Confirm the Amended Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

26. 21-20592-E-13 DBL-1 CARRIE NOAH-GILLIAM Patricia Wilson MOTION TO CONFIRM PLAN 8-4-21 [29]

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 August 5, 2021. By the court's calculation, 40 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 xxxxx.

The debtor, Carrie Lynn Noah-Gilliam ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for

1. Monthly plan payments of $3,100.00 for months 1 thru 5;

2. Followed by payments of $3,314.00 for months 6 thru 60; and

3. a 2.5 percent dividend to unsecured claims totaling $104,411.00.

Amended Plan, Dckt. 33. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on August 25, 2021. Dckt. 37. Trustee opposes confirmation of the Plan on the basis that Debtor may not be able to make plan payments.

DISCUSSION

Failure to Afford Plan Payment / Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). According to Trustee, Debtor must increase plan payments from $3,314.00 to $3,334.52 in September 2021 in order to address the increase in mortgage payments as noted in the Notice of Mortgage Payment Change filed on August 8, 2021.

Debtor filed a Reply on September 3, 2021 accepting trustee's change of monthly plan payments for months 6 thru 60 to be increased by $20.52 to $3,334.52. Dckt. 40.

Trustee would like Debtor to clarify whether are two arrearages that to be addressed for creditor Carrington Mortgage Inc. According to Trustee, the Plan shows two separate debts in Class 1 to Carrington Mortgage, Inc., §3.07(c), but Section 7 of the Plan lists one debt. The arrearage dividend payments listed in Class 1, equal the dividend payment in Section 7 of the Plan. Thus, Trustee seeks clarification.

At the hearing xxxxxxxx

Additionally, according to Trustee, Section 7, under "Section 314 – Unsecured Creditors" shows Trustee is to pay a specified amount of $45.00 to unsecured creditors but does not specify how much will be paid to each claim. Trustee is not opposed to this provision provided it is limited to existing claims (Claim #1, student loan and the bar date was May 2021), and the Trustee does not have to monitor for additional claims, and then somehow catch up or reapportion payments.

At the hearing xxxxxxxx

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

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Carrie Lynn Noah-Gilliam ("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 xxxxx.

27. **21-21161-E-13** **CINDY RONQUIST** **MOTION TO CONFIRM PLAN**
NF-1 **Nikki Farris** **7-21-21 [27]**
27 thru 29

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 21, 2021. By the court's calculation, 55 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

The debtor, Cindy Suzanne Ronquist ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for payments of $2,460.00 per month for a total of 60 months, and a 100% dividend to the general unsecured claims totaling $115,594.40. First Amended Plan, Dckt. 27. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on August 31, 2021. Dckt. 46. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor has assets that were not listed or exempted on her schedules.

B. The plan may not be feasible.

C. Debtor's plan may not be their best efforts under 11 U.S.C. § 1325(b).

DISCUSSION

Debtor Fails Liquidation Analysis

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). The Chapter 13 Trustee states that Debtor has supplied insufficient information relating to certain assets including: Debtor's shop on her mother's property that has cattle and calves. According to Trustee, Trustee requested that amended Schedules be filed and to date, Debtor has failed to do so.

At the Meeting of Creditors, Debtor testified to having sold a Cougar Trailer for its fair value to a friend. The Trustee is not certain unsecured creditors will receive at least what they would in a hypothetical Chapter 7 liquidation as required under 11 U.S.C. §1325(a)(4). This is the second time Trustee has raised this issue and it has not yet been addressed.

Failure to File Amended Schedules I and J

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). As stated above, Trustee has requested amended Schedules to address the cattle Debtor owns but also to list any income from said cattle and to list any related expenses. No amended Schedules have been filed. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Failure to Provide Disposable Income / Not Best Effort

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

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

While Trustee references a citation to a prior Objection to Confirmation (Dckt. 19) as grounds to support this claim, Trustee fails to state any grounds to substantiate their claim both in the previous objection (Civil Minutes Dckt. 24, page 2) as with this current objection.

Debtor having failed to address concerns regarding inaccurate Schedules I and J, the Amended Plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

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

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

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

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

28. 21-21161-E-13 CINDY RONQUIST
Nikki Farris

OPPOSITION TO MOTION TO CONFIRM CHAPTER 13 PLAN OF DENISE R. WINN WRIGHT 7-31-21 [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.

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 August 2, 2021. By the court's calculation, 43 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 "Opposition" to Confirmation of Plan is sustained.

Improperly Designated as an Objection to Confirmation

Creditor characterized this as a "Objection to Confirmation," when actually it is filed as an opposition to Debtor's Motion to Confirm. L.B.R. 9015-1 (d). Rather than dismissing this "Objection,"

the court considers it as an "opposition" to Debtor's Motion.

Review of Opposition to Motion to Confirm

Denise R. Winn Wright ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

A. Creditor is a secured creditor but labeled as an unsecured creditor.

B. Debtor's Chapter 13 petition and original schedules are fraudulent.

C. Creditor objects to Debtor's Amended Schedule I filed on March 31, 2021.

DISCUSSION

Creditor's opposition is well-taken.

Failure to Provide for a Secured Claim

Creditor represented Debtor in a dissolution of marriage case in Modoc County Superior Court, Case No. FL-20-019 Creditor asserts a claim of $35,854.57 in this case. Again, the proposed Amended Plan modifies the rights of the Creditor (whose claim is secured by an interest in all of Debtor's property) by providing that Creditor is an unsecured creditor. 11 U.S.C. § 1322(b)(2). The Creditor's claim is a secured claim based on an attorney charging lien signed by Debtor on March 4, 2020. This is the second time Creditor raises this Objection. *See* Civil Minutes, Dckt. 23.

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

11 U.S.C. § 1322(b) specifies the provisions that a plan may include at the option of the debtor. With reference to secured claims, the debtor may not modify a home loan but may modify other secured claims (11 U.S.C. § 1322(b)(2)), cure any default on a secured claim—including a home loan—(11 U.S.C. § 1322(b)(3)), and maintain ongoing contract installment payments while curing a pre-petition default (11 U.S.C. § 1322(b)(5)).

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

A. Provide a treatment that the debtor and creditor agree to (11 U.S.C. § 1325(a)(5)(A)),

B. Provide for payment in full of the entire claim if the claim is modified or will mature by its terms during the term of the Plan (11 U.S.C.

§ 1325(a)(5)(B)), or

C. Surrender the collateral for the claim to the creditor (11 U.S.C. § 1325(a)(5)(C)).

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

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

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

Debtor filed a Response on September 1, 2021 arguing that the alleged security interest in paragraph 3 of the Creditor's Professional Service and Fee Agreement was not perfected and the agreement did not expressly grant a security interest in but that Debtor only agreed to "grant a lien on any and all claims or causes of action under the subject of the attorneys representation" in the divorce action, which property is now subject of the bankruptcy action. Response, Dckt. 49, at ¶ 6. Debtor then requesting that the court decree Creditor's security interest void and that her claim be classified as wholly unsecured. *Id.*, at ¶ 7.

Creditor filed a Reply on September 10, 2021 arguing that the court has already held that Creditor's claim is a secured claim (Dckt. 25) and Debtor failed to respond to Creditor's objection and did not attend the hearing on said objection. Further adding that even if the court did not find Creditor to be holding a secured claim, family law attorney-charging liens are commonplace and survive bankruptcy petitions with Creditor directing the court bankruptcy court case and several California cases recognizing the family law liens. Creditor also cites to *Cetenko v. United California Bank* for the premise that "no 'notice of lien' need be filed in the pending action to 'perfect' the lien; nor is a judgment on the lien a condition precedent to it's [sic] existence of viability." *Cetenko*, 30 C.3d at 532.

Debtor's request to void Creditor's security interest and classify it as wholly unsecured through this objection is improper. If Debtor desires to have the court determine the extent, validity, and priority of Creditor's lien, then Debtor must seek such by adversary proceeding. Fed. R. Bankr. P. 7001.

Fraudulent Filing

Creditor again alleges that the accuracy of the Plan's schedules, statements of the debts, expenses, and percentage of repayment of debt, and inaccuracies constitute an attempt to mislead the bankruptcy court. Creditor having raised the same issues on her prior Objection, the court does not discuss them in detail. *See* Civil Minutes, Dckt. 23.

Creditor requests that Debtor amend her Petition and Schedules to accurately reflect creditors with secured claims, assets, expenses, and/or exemptions.

Amended Schedule I filed on March 31, 2021

Creditor objects to Debtor's Amended Schedule I on the basis that Debtor failed to amend them to conform to the court's June 23, 2021 order. According to Creditor, Debtor continues to include payroll deductions that do not exist and/or are not required , such as:

1. A "non-existent retirement loan for $640.63," where Debtor admitted at the Meeting of Creditors that this loan has already been paid off;

2. The following non-mandatory deductions: $21.67 for campaign donations, $226.39 to a voluntary HSA Account, $6.64 for charity.

Objection, Dckt. 34, at 4:3-5. Creditor also argues that Debtor failed to include funds she receives from her daughter for the payment on the Sierra Centra Credit debt for the 2017 Subaru Impreza; and has failed to list her cattle income on her schedule. *Id.*, at 4:6-7. Creditor alleging that this is an additional $1,250.00 per month that was not properly listed, which makes Debtor's net income available as $8,488.97. *Id.*, at 4:8-9.

In the Response, Debtor does not address the deductions and other financial issues raised by Creditor.

Not Best Effort

Creditor further opposes to the proposed Plan on the grounds that the plan does not properly treat secured creditors' claims under 11 U.S.C. 1325(a)(5) because the interest rate paid on secured claims is too low, and the valuation of the creditors' collateral is too low. Further alleging that Debtor is trying to withhold disposable income so that Debtor does not have to repay as much of her debts.

Lastly, Creditor requests adequate protection payments because the amount Debtor proposes to pay Creditor is unreasonable and objects to receiving no interest.

In her Response, Debtor argues that Creditor is not entitled to adequate protection payments because Creditor has failed to offer evidence to show any diminution in value where Debtor has agreed to a 100% re-payment plan which retains Creditor's lien at full value. Response, at ¶ 9. Further adding that the property securing the claim has a high valuation of $327,881.00 (an existing equity cushion), which even if it decreased, it would not affect Creditor's claim of $35,854.57. *Id.* Thus, the equity cushion available provides Creditor with adequate protection. *Id.*, at ¶ 10.

Debtor further notes that the proposed plan as amended pays 100% to creditors with unsecured claims. *Id.*, at ¶ 13. With the Plan providing for an average of $2,460.00 per month for an overall total of 60 months, so as to pay 100% to the general unsecured claims. Thus, Creditor's objection is in bad faith because Creditor will be receiving 100% of their unsecured claim.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Opposition is sustained and the court will enter an order denying the Motion to Confirm the Chapter 13 Plan filed by Debtor.

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 Opposition to the Motion to Confirm the Chapter 13 Plan filed by Denise R. Winn Wright ("Creditor"), DCN:NF-1, having been considered by the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Opposition is sustained, and the court shall enter a separate order denying the Motion to Confirm Debtor's Chapter 13 Plan.

29. 21-21161-E-13 CINDY RONQUIST **MOTION FOR ADEQUATE PROTECTION**
Nikki Farris **8-3-21 [38]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Chapter 13 Trustee, on August 3, 2021. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

The Motion for Adequate Protection is xxxxx.

Creditor Denise R. Winn Wright ("Creditor") requests the court order Debtor to provide pre-confirmation adequate protection payments in the amount of $2,034.20 to Creditor on the basis that Creditor has an attorney charging lien over Debtor's personal property for a $35,854.57 debt based on Creditor's legal services to Debtor in a dissolution proceeding in Modoc County Superior Court.

Creditor further requests that the court order the Chapter 13 Trustee to release in one lump sum the amount of $10,320.00, representing the monthly payments from April, 2021 through August 31,

2021, within 10 days of the entry of an Order deciding this motion.

Trustee's Response

Trustee does not believe that Creditor is entitled to adequate protection payments where the claim is based on a statutory attorney's fee lien, because a creditor is only allowed an adequate protection payment if the secured claim is attributable to the purchase of the personal property that is securing the lien held by the creditor. Trustee argues that is not the case here.

Trustee also notes that even if the court were to find Creditor is entitled to adequate protection payments, the amount requested is too high and not in the best interest of creditors with secured claims. The lump sum required by Creditor and the monthly adequate protection payment in the amount of $2,640.00 would require the entire balance Trustee is holding and would be impossible for Trustee to pay for the entirety of the plan. Moreover, Trustee argues that paying Creditor according to the request would give priority to Creditor over other equally classed or even higher classed creditor in violation of Section 5.02 of the form plan.

Debtor's Objection

Debtor opposes the relief requested and argues that the security interest to referred to by Creditor was never perfected as required by the Uniform Commercial Code as enacted in California and requests that such security interest be decreed void and that Creditor's claim be classified as wholly unsecured. Dckt. 51. Explaining that Creditor did not acquire a security interest because the Agreement did not expressly grant one and Debtor "merely agreed [to] 'grant a lien on any and all claims or causes of action under the subject of the attorneys [sic] representation' in the divorce action which property is now subject of the bankruptcy action." *Id.*, at ¶ 13.

As explained in the ruling for Debtor's Motion to Confirm the Plan, Debtor's request to void Creditor's security interest and classify it as wholly unsecured through this objection is improper. If Debtor desires to have the court determine the extent, validity, and priority of Creditor's lien, then Debtor must seek such by adversary proceeding. Fed. R. Bankr. P. 7001.

Additionally, Debtor argues that Creditor is not entitled to adequate protection payments because Creditor has failed to offer evidence to show any diminution in value where Debtor has agreed to a 100% re-payment plan which retains Creditor's lien at full value. *Id.*, at ¶ 17. Further adding that the property securing the claim has a high valuation of $327,881.00 (an existing equity cushion), which even if it decreased, it would not affect Creditor's claim of $35,854.57. *Id.* Thus, the equity cushion available provides Creditor with adequate protection. *Id.*, at ¶ 18.

DISCUSSION

Section 361 of the Bankruptcy Code provides

> When adequate protection is required under section 362, 363, or 364 of this title of an interest of an entity in property, such **adequate protection** may be provided by—

> (1)requiring the trustee to make a cash payment or periodic cash payments to such entity, to the extent that the stay under section 362 of this title, use, sale, or lease under section 363 of this title, or any grant of a lien under section 364 of this title **results in a decrease in the value of such entity's interest in such property**;
>
> (2)providing to such entity an additional or replacement lien to the extent that such stay, use, sale, lease, or grant results in a decrease in the value of such entity's interest in such property; or
>
> (3)granting such other relief, other than entitling such entity to compensation allowable under section 503(b)(1) of this title as an administrative expense, as will result in the realization by such entity of the indubitable equivalent of such entity's interest in such property.

11 U.S.C. § 361 (emphasis added).

California Civil Code section 2872 provides "a lien is a charge imposed in some mode other than by a transfer in trust upon specific property by which it is made security for the performance of an act." An attorney's lien (also known as a "charging" lien) is a lien that secures an attorney's compensation against the funds or judgment recovered by the attorney for the client. *Fletcher v. Davis*, 33 Cal. 4th 61, 66 (2004). With hourly fee agreements, a valid attorney's lien is created only if the attorney complies with California Rules of Professional Conduct, Rule 3-300. *Id.* at 69.

Rule 3-300 requires the attorney to "explain the transaction fully, to offer fair and reasonable terms, to provide a copy of the agreement**, to give the client an opportunity to seek independent legal advice [and to advise the client in writing that he may do so], and to secure the client's written consent**." *Id.* at 71; Rule 3-300 (emphasis added).

An attorney's lien is not automatically created upon the lawyer's provision of legal services to a client, but requires a contract for its creation. *Carroll*, 99 Cal. App. 4th at 1172. An attorney's lien is created and takes effect when the fee agreement giving rise to the lien is executed. *Cetenko*, 30 Cal. 3d at 534. Such a lien has priority over other liens created after the attorney-client fee agreement was entered into. *Carroll*, 99 Cal. App. 4th at 1175.

In the Motion, Creditor lists the gross value of all the Debtor's assets, including "Dad's Elk Cape," "BBQ," "Elk Photo," "2 Children's hand prints," and the like. Though making a general statement that these assets are depreciating, the Motion does not state with particularity how and why such assets are depreciating.

Creditor concludes that she is not adequately protected for her $35,854.57 secured claim. Thus, Creditor is requesting adequate protection payments in the amount of $2,034.20, up until confirmation of the plan, and a lump sum payment in the amount of $10,320.00.

Creditor provides Exhibit 1, the Fee Agreement upon which Creditor bases her lien. Dckt. 40. The Agreement is for representation of Debtor in her marital dissolution. The Agreement includes a lien provision which states:

> 7. Lien. Client hereby grants Attorney a lien on **any and all claims or causes of action that are the subject of Attorney's representation under this Agreement.** Attorney's lien will be for any sums due and owing to Attorney at the conclusion of Attorney's services. **The lien will attach to any recovery Client may obtain whether by arbitration award, judgment, settlement or otherwise.** The effect of such a lien is that Attorney may be able to compel payment of fees and costs from any such funds recovered on behalf of client even if attorney has been discharged before the end of the case. Because a lien may affect Client's property rights, Client may seek the advice of an independent lawyer of Client's choice before agreeing to such a lien. By initialing this paragraph, Client represents and agrees that Client has had a reasonable opportunity to consult such an independent lawyer and - whether or not Client has chosen to consult such an independent lawyer - Client agrees that attorney will have a lien as specified above.
>
> [initials] Client Initial Here [initials] Attorney Initial Here

Agreement, ¶ 7; Exhibit 1, Dckt. 40.

Creditor has provided her Declaration in support of the Motion. Dckt. 41. Her personal knowledge testimony under penalty of perjury (Fed. R. Evid. 401, 402) consists of:

> 1. I am the Creditor seeking adequate protection in this action, and as such am fully familiar with the facts and circumstances surrounding this case.
>
> 2. I own and operate the Law Office Offices of Denise R. Winn Wright.
>
> 3. I drafted and have read the Motion for Pre-Confirmation Adequate Protection Payments and know the contents thereof. The same is true of my own knowledge, except as to those matters that are therein stated on information and belief, and concerning those matters, I believe it to be true.

Declaration, Dckt. 41. The evidence presented is that Creditor has a law office, Creditor has drafted the Motion, and that whatever is in the Motion Creditor says she either knows it to be true or that while not knowing it to be true, Creditor is informed and believes it is true, but doesn't know based on her personal knowledge it is true.

Two things strike the court. First, the Declaration does not state the testimony of Creditor, but merely references other documents. Just as a witness on the stand would not say, "Yeah, I'm here today and my testimony is that whatever is written in some other documents is true under penalty of perjury."

Second, the court cannot identify any legal authority for a witness to testify under penalty of perjury, which testimony must be based on the witness' personal knowledge, that mere having "information or belief" from some other person is competent testimony.

Here, Debtor has struggled in her Chapter 13 case for the past six months. She, a single

debtor, will make three separate car payments for three separate vehicles:

2017 Subaru Impreza.....$109.00 a month (court's calculation is $111.48 a month)

2017 Kingstone Cougar.....$155.00 a month (court's calculation is $167.50 a month)

2021 Toyota Tacoma
TRD Sport.....$860.00 a month

Plan, Class 2 and Class 4; Dckt. 30. The Plan also provides for a 100% dividend on $115,594.40 for general unsecured claims. *Id*., Class 7.

On Amended Schedule I Debtor states having gross wages of $9,490.87 a month and alimony of $300 a month. After ($3,347.23) in deductions, Debtor states having take home pay of $6,443.00 a month. Dckt. 32 at 3-4. On Schedule J Debtor lists having reasonable and necessary expenses of ($3,998). Dckt. 1 at 35-36. For Debtor's household of one person:

A. Debtor has no rent/mortgage expense, but does have monthly expenses of:

1. ($75) for real estate taxes (Debtor lists owning a mobile home, but no interest in any land);

2. ($98) for insurance;

3. ($200) for maintenance and repair on her mobile home valued at $32,000;

B. Debtor lists having money food and housekeeping expenses of $740 for just herself.

C. Debtor lists transportation expenses (registration, gas, maintenance) of $550;

D. Debtor lists one car payment (of the three she owns) of $860 a month;

E. Debtor pays $240 a month ($2,880 annually) for vehicle insurance for a one-person household.

Based on the evidence presented, Creditor is not in need of adequate protection for a diminution in value of the collateral (all the Debtor's assets) which Creditor asserts to have. Creditor has not provided evidence of assets diminishing in value or that the collateral asserted by Debtor will drop below the $35,854.57 which Creditor asserts she is owed.

Additionally, Creditor chose her client wisely, having a high money earning client. To pay Creditor her $35,854.57 over sixty months, the payments are a mere $598 a month. If Creditor has a perfected lien, with interest at 4% per annum, the monthly payment would be $660 a month. A debt that Debtor, on top of any collateral, can easily pay.

The court's final observation is that Debtor and Creditor may well be bringing family law disputes and practices into federal court. The Debtor is in bankruptcy and has to deal with creditors'

claims. If there is a dispute, Debtor has a readily available federal forum to promptly and cost effectively resolve the disputes. For Creditor, she too has a forum in which an experienced bankruptcy creditor attorney can pin down the wings of a debtor who is seeking to fly outside of the requirements of the Bankruptcy Code.

The Motion is denied without prejudice. Given the lack of evidence to show the lack of adequate protection, the court will not prejudice (this time) Creditor with a final ruling which would haunt her forever in this 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 Motion for Adequate Protection Payments filed by Creditor Denise R. Winn Wright ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** the Motion is denied without prejudice.

30. **21-20795-E-13 DBJ-2** **TORRI JONES** **Douglas Jacobs**

CONTINUED OBJECTION TO CLAIM OF THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., CLAIM NUMBER 1
5-20-21 [43]

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

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on May 20, 2021. By the court's calculation, 61 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

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

The Objection to Proof of Claim Number 1 of The Bank of New York Mellon Trust Company, N.A. is xxxxx.

Torri Lynn Jones, the Chapter 13 Debtor, ("Objector") requests that the court disallow the claim of The Bank of New York Mellon Trust Company, N.A. As Successor in Interest to all Permitted Successors and Assigns of Bank One, National Association as Trustee of the Green Point Manufactured Housing Contract Trust, Pass-Through Certificate Series 2000-3 ("Creditor"), Proof of Claim No. 1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of $92,404.49. Objector asserts that in December 2018 Debtor received an insurance check in the amount of $65,438.00 which Debtor forwarded to Ditech Financial, Inc., the mortgage holder at the time, and that this check satisfied the debt now claimed. Declaration, Dckt. 46.

On July 6, 2021 the parties filed an *Ex-Parte* Motion and Stipulation requesting the court continue the hearing on the instant Objection to 2:00 p.m. on September 14, 2021. Dckt. 61. The court granted the request on July 12, 2021 and the hearing on this Motion was continued to September 14, 2021. Dckt. 66.

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting

to a proof of claim has the burden of presenting substantial evidence to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *In re Austin,* 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

Once a party has objected to a proof of claim, the creditor asserting the claim may not withdraw the claim except on order of the court. FED. R. BANKR. P. 3006.

Debtor objects to Creditor's claim of $92,404.49 on the basis that Debtor paid $65,438 to Ditech Financial, Inc. ("Ditech") in December of 2018. Debtor endorsed the $65,438 check, and according to the check (filed as Exhibit B), the check was cashed by Ditech. Dckt. 59, Exhibit B. After making such payment, Debtor contends that she did not receive any communications from Ditech nor Creditor in regards to any missed payments.

In its Response, Creditor's sole argument is that Debtor has failed to present sufficient evidence to rebut the presumptive validity of the Claim. Dckt. 64. However, Debtor has provided a copy of the endorsed check as evidence of payment to Ditech, which was chased. Dckt. 59, Exhibit B. Furthermore, Creditor stated that a supplement would be filed prior to the continued hearing date, but not such supplemental pleadings have been filed as of the court's drafting of this pre-hearing disposition.

A review of the docket shows that Debtor has filed a voluntary Motion to Dismiss on August 24, 2021 with the hearing set for October 20, 2021.

At the hearing, xxxxxxxxxx

~~Based on the evidence before the court, Creditor's claim is disallowed in its entirety / Describe Portion Disallowed. The Objection to the Proof of Claim is sustained / overruled 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 Objection to Claim of The Bank of New York Mellon Trust Company, N.A. ("Creditor"), filed in this case by Torri L. Jones, the Chapter 13 Debtor, ("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 the Objection to Proof of Claim Number 1 of Creditor is xxxxx.

~~Attorney's fees and costs, if any, shall be requested as provided by Federal Rule of Civil Procedure 54 and Federal Rules of Bankruptcy Procedure 7054 and 9014.~~

FINAL RULINGS

31.	**19-26637-E-13** **PSB-3**	**MARGO SHUGART-YOUNG** **Paul Bains**	**MOTION FOR COMPENSATION BY THE LAW OFFICE OF BAINS LEGAL, PC FOR PAULDEEP BAINS, DEBTORS ATTORNEY(S)** **8-13-21 [43]**

Final Ruling: No appearance at the September 14, 2021 hearing is required.

Local Rule 9014-1(f)(2) Motion—No Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on August 13, 2021. By the court's calculation, 32 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00).

The Motion for Allowance of Professional Fees was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. The court has determined that oral argument will not be of assistance in rendering a decision in this matter.

The Motion for Allowance of Professional Fees is granted.

Pauldeep Bains, the Attorney ("Applicant") for Margo Karen Shugart-Young, 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 April 16, 2020, through July 19, 2021. Applicant requests fees in the amount of $1,680.00 and costs in the amount of $0.00.

Trustee does not oppose the fees but notes there is a typographical error were in the amount requested on page 4 is $1,860.00 but the rest of the motion and the exhibit states $1,680.00. Dckt. 48. Debtor filed a Response stating that the correct amount is $1,680.00. Dckt. 50.

APPLICABLE LAW

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including–
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
>
> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
>
> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

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

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

Reasonable Fees

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

A. Were the services authorized?

B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?

C. Are the services documented adequately?

D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?

E. Did the attorney exercise reasonable billing judgment?

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

Reasonable Billing Judgment

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

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

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

A review of the application shows that Applicant's for the Estate include two Motions to Confirm Modified Plan and the instant Motion for Compensation. 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. 42. 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.

Motion to Confirm (PSB-1): Applicant spent 3.6 hours in this category. Applicant communicated with Debtor, prepared and filed motion, and reviewed final ruling.

Motion to Confirm (PSB-2): Applicant spent 4.6 hours in this category. Applicant communicated with Debtor, prepared and filed motion, and reviewed final ruling.

Motion for Compensation: Applicant spent 2.0 hours in this category. Applicant prepared and filed the instant motion.

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
Pauldeep Bains, Attorney	5.6	$300.00	$1,680.00

Total Fees for Period of Application	$1,680.00

Costs and Expenses

Applicant does not seek costs and expenses through this Application.

FEES AND COSTS & EXPENSES ALLOWED

Fees

The unique facts surrounding the case, including two Motions to Confirm Modified Plan and the instant Motion for Compensation, raise substantial and unanticipated work for the benefit of the Estate, Debtor, and parties in interest. The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. The request for additional fees in the amount of $1,680.00 is approved pursuant to 11 U.S.C. § 330 and authorized to be paid by David Cusick ("the Chapter 13 Trustee") from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

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

Fees	$1,680.00
Costs and Expenses	$0.00

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 Pauldeep Bains ("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 Pauldeep Bains is allowed the following fees and expenses as a professional of the Estate:
>
> Pauldeep Bains, Professional Employed by Margo Karen Shugart-Young ("Debtor")
>
> Fees in the amount of $1,680.00
> Expenses in the amount of $0.00,
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330

as counsel for Debtor.

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

32. **17-25246-E-13 PSB-4** | **JORGE/DINA CHAVEZ** | **Paul Bains** | **MOTION FOR COMPENSATION FOR PAULDEEP BAINS, DEBTORS ATTORNEY(S)** **8-17-21 [57]**

Final Ruling: No appearance at the September 14, 2021 hearing is required.

Local Rule 9014-1(f)(2) Motion—No Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 17, 2021. By the court's calculation, 28 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00).

The Motion for Allowance of Professional Fees was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. The court has determined that oral argument will not be of assistance in rendering a decision in this matter.

The Motion for Allowance of Professional Fees is granted.

Pauldeep Bains, the Attorney ("Applicant") for Jorge Chavez and Dina Mae Chavez, 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 5, 2017, through August 17, 2021. Applicant requests fees in the amount of $2,687.00 and costs in the amount of $0.00.

To date, fees in the amount of $3,810.00 have been paid by the Chapter 13 Trustee through Debtor's Chapter 13 Plan to Applicant.

Trustee does not oppose the fees but notes that there is typographical error in the billing statement stating the date of services performs were in the year 2017 instead of 2018. Dckt. 63.

APPLICABLE LAW

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including–
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
>
> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
>
> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

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

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

Reasonable Fees

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

A. Were the services authorized?

B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?

C. Are the services documented adequately?

D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?

E. Did the attorney exercise reasonable billing judgment?

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

Reasonable Billing Judgment

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

(a) Is the burden of the probable cost of legal services disproportionately large in relation to the size of the estate and maximum probable recovery?

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

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

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

A review of the application shows that Applicant's for the Estate include two Motions to Confirm Modified Plan and the instant Motion for Compensation. 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. 62. 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.

Motion to Confirm (PSB-2): Applicant spent 6.7 hours in this category. Applicant communicated with Debtor, reviewed income and expenses, prepared motion, drafted plan and filed and served motion.

Motion to Confirm (PSB-3): Applicant spent 6.2 hours in this category. Applicant communicated with Debtor, reviewed income and expenses, prepared motion, drafted plan and filed and served motion.

Motion for Compensation: Applicant spent 2.5 hours in this category. Applicant prepared the instant motion.

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**
Pauldeep Bains, Attorney	7.6	$300.00	$2,280.00
Tina Perez, Paralegal	2.2	$185.00	$407.00
Total Fees for Period of Application			$2,687.00

Costs and Expenses

Applicant does not seek costs and expenses through this Application.

FEES AND COSTS & EXPENSES ALLOWED

The unique facts surrounding the case, including two Motions to Confirm Modified Plan and the instant Motion for Compensation, 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 $2,687.00 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	$2,687.00
Costs and Expenses	$0.00

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 Pauldeep Bains ("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 Pauldeep Bains is allowed the following fees and expenses as a professional of the Estate:

Pauldeep Bains, Professional Employed by Jorge Chavez and Dina Mae Chavez ("Debtor")

Fees in the amount of $2,687.00
Expenses in the amount of $0.00,

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

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

33. **19-21604-E-13 TLA-2** | **MYRON/ANGELA HOWE** **Thomas Amberg** | **MOTION FOR COMPENSATION BY THE LAW OFFICE OF AMBERG HARVEY FOR THOMAS L. AMBERG, JR., DEBTORS ATTORNEY(S) 8-17-21 [45]**

Final Ruling: No appearance at the September 14, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 17, 2021. By the court's calculation, 28 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.

Thomas L. Amberg, Jr., the Attorney ("Applicant") for Myron Howe and Angela Howe, the Chapter 13 Debtors ("Clients"), makes a Request for the Additional Allowance of Fees and Expenses in this case.

Fees are requested for the period May 17, 2021, through May 28, 2021. Applicant requests fees in the amount of $1,050.00.

APPLICABLE LAW

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including–
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
>
> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
>
> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

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

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

Reasonable Fees

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

A. Were the services authorized?

B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?

C. Are the services documented adequately?

D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?

E. Did the attorney exercise reasonable billing judgment?

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

Reasonable Billing Judgment

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

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

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

A review of the application shows that Applicant's for the Estate include a Motion to Modify Debtor's Plan and response to Trustee's Motion to Dismiss Case. 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. 44. 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.

Motion to Dismiss: Applicant spent 0.4 hours in this category. Applicant reviewed Trustee's Motion to dismiss, communicated with clients, and responded to Motion.

Motion to Modify Plan: Applicant spent 3.1 hours in this category. Applicant communicated with clients, prepared motion, plan, exhibits, and declaration, and filed and served the motion.

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**
Thomas L. Amberg	3.5	$300.00	$1,050.00
Total Fees for Period of Application			$1,050.00

Costs and Expenses

Applicant does not seek costs and expenses through this application.

FEES AND COSTS & EXPENSES ALLOWED

Fees

The unique facts surrounding the case, including a Motion to Modify Debtor's Plan and response to Trustee's Motion to Dismiss Case, raise substantial and unanticipated work for the benefit of the Estate, Debtor, and parties in interest. The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. The request for additional fees in the amount of $1,050.00 is approved pursuant to 11 U.S.C. § 330 and authorized to be paid by David Cusick ("the Chapter 13 Trustee") from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

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

Fees	$1,050.00
Costs and Expenses	$0.00

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 Thomas L. Amberg ("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 Thomas L. Amberg is allowed the following fees and expenses as a professional of the Estate:
>
> Thomas L. Amberg, Professional Employed by Myron Emmett Howe and Angela Marie Howe ("Debtor")
>
> Fees in the amount of $1,050.00
> Expenses in the amount of $0.00,
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for Debtor.
>
> **IT IS FURTHER ORDERED** that David Cusick ("the Chapter 13

Trustee") is authorized to pay the fees allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

34. **21-22504-E-13 ASW-1** | **CLARENCE/DIEDRA MOORE** | **Marc Caraska** | **OBJECTION TO CONFIRMATION OF PLAN BY CREDITOR FLAGSTAR BANK, FSB** **8-19-21 [22]**

Final Ruling: No appearance at the September 14, 2021 hearing is required.

The case having previously been dismissed, the Objection is overruled as moot.

The case having previously been dismissed, the Objection is overruled as moot.

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 of Plan having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled as moot, the case having been dismissed.

35. **19-20125-E-13 PGM-9** | **ROBERT/DONNA DECELLE** **Peter Macaluso** | **MOTION TO APPROVE LOAN MODIFICATION** **8-4-21 [160]**

Final Ruling: No appearance at the September 14, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 4, 2021. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

The Motion to Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by Robert Aurther DeCelle, III and Donna Marie DeCelle ("Debtor") seeks court approval for Debtor to incur post-petition credit. Freedom Mortgage Corporation ("Creditor"), whose claim the Plan provides for in Class 4, has agreed to a loan modification that will reduce Debtor's mortgage payment from the current $1,057.30 per month to $1,017.78 per month with a fixed rate of 3.0% for the next 30 years.

The Motion is supported by the Declaration of Robert A. DeCelle and Donna M. DeCelle. Dckt. 162. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms.

This post-petition financing is consistent with the Chapter 13 Plan in this case and with Debtor's ability to fund that Plan. There being no objection from the Chapter 13 Trustee or other parties in interest, and the Motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification is granted.

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

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

The Motion to Approve Loan Modification filed by Robert Aurther DeCelle, III and Donna Marie DeCelle ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the court authorizes Robert Aurther DeCelle, III and Donna Marie DeCelle to amend the terms of the loan with Freedom Mortgage Corporation ("Creditor"), which is secured by the real property commonly known as 6021 Hazel Avenue, Orangevale, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion (Dckt. 163).

36. 19-20825-E-13 SLE-10 PIOTR/CELESTIAL REYSNER Steele Lanphier MOTION TO MODIFY PLAN 7-20-21 [142]

Final Ruling: No appearance at the September 14, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 20, 2021. 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 Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Piotr Gabriel Reysner and Celestial Olivia Reysner ("Debtor"), have filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on August 24, 2021. Dckt. 165. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Piotr Gabriel Reysner and Celestial Olivia Reysner ("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, 2021, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

37.	**18-23227-E-13 PSB-4**	**KIMBERLI HECK AND DAVID HECK, JR.** **Paul Bains**	**MOTION TO MODIFY PLAN** **8-3-21 [105]**

Final Ruling: No appearance at the September 14, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 3, 2021. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Kimberli Beth Heck and David Keith Heck, Jr. ("Debtor"), have filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on August 24, 2021. Dckt. 116. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Kimberli Beth Heck and David Keith Heck, Jr. ("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 August 3, 2021, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

38. **21-21531-E-13 DBL-1** **MARILYN GRAHAM** **Bruce Dwiggins** **OBJECTION TO NOTICE OF POSTPETITION MORTGAGE FEES, EXPENSES, AND CHARGES 7-27-21 [20]**

Final Ruling: No appearance at the September 14, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on July 27, 2021. By the court's calculation, 49 days' notice was provided. 28 days' notice is required.

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

The Objection to Notice of Post-Petition Mortgage Fees, Expenses, and Charges is resolved as stated in the Stipulation of the parties, and disallowed for all amounts in excess of $700.00.

Marilyn Ann Graham, the Chapter 13 Debtor, ("Objector") requests that the court disallow the post-petition fees, expenses, and charges of Flagstar Bank, FSB ("Creditor"), in the Notice of Post-Petition Mortgage Fees, Expenses, and Charges filed on June 30, 2021. The Notice is asserted to be in the amount of $900.00. Objector asserts that the fees are a high figure for a Plan that does not include a mortgage payment.

DISCUSSION

On September 10, 2021, the parties filed a Stipulation in order to avoid protracted litigation regarding the rules governing the filing of Post-Petition Mortgage Fees, Expenses, and Charges. The Stipulation provides for Creditor to file an amended Notice of Post-Petition Fees and Costs reducing the incurred fees and costs by $250.00 to $700.00, the filing of the Amended. Dckt. 27. [Fn.1.]

FN. 1. On September 3, 2021, Creditor filed the Amended Notice of Post Petition Mortgage Fees, Expenses and Charges. The amended Notice reflects a change in the attorney's fees, where the $300.00 for the review of Plan has now been reduced to $50.00 and listed as "Other." Notice, at 1.

Based on the Stipulation and on the evidence before the court, the Objection to Notice of Post-Petition Mortgage Fees, Expenses, and Charges is $700.00, and as further reduced in the September 3, 2021 Amended Notice of Post Petition Fees, Expenses and Charges.

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 Post-Petition Mortgage Fees, Expenses, and Charges of Flagstar Bank, FSB ("Creditor"), filed in this case by Marilyn Ann Graham, the Chapter 13 Debtor, ("Objector") having been presented to the court, the Parties having filed their Stipulation resolving all issues in this Objection, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that pursuant to the Stipulation resolving this Objection to Notice of Post-Petition Mortgage Fees, Expenses, and Charges of Creditor such Fees, Expenses, and Charges are $700.00 and not allowed for any amounts in excess thereon, and as further reduced in the September 3, 2021 Amended Notice of Post Petition Fees, Expenses and Charges.

39. 21-21047-E-13 MRL-1 — MERRILL TEEMANT — Mikalah Liviakis — MOTION TO MODIFY PLAN — 7-26-21 [24]

Final Ruling: No appearance at the September 14, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 27, 2021. 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 Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Merrill Teemant ("Debtor"), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on August 24, 2021. Dckt. 34. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Merrill Teemant ("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 26, 2021, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

40. **19-26560-E-13 DEF-4** | **LEONARD COFFEE** | **David Foyil** | **MOTION TO MODIFY PLAN** | **7-20-21 [64]**

Final Ruling: No appearance at the September 14, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 20, 2021. 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 Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Leonard Wayne Coffee ("Debtor"), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on August 30, 2021. Dckt. 77. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Leonard Wayne Coffee ("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, 2021, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

41. 19-21686-E-13 SLH-1 DAVID/BROOKE LEITE Seth Hanson MOTION TO INCUR DEBT 8-11-21 [35]

Final Ruling: No appearance at the September 14, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on August 11, 2021. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

The Motion to Incur Debt is granted.

The chapter 13 debtors, David Franco Leite and Brooke Lee Hayward Leite ("Debtor"), seeks permission to incur debt of a student loan for Mrs. Leite for purposes of furthering her career goals, with a total loan amount of $20,500.00 from Direct Stafford Loan with an interest rate of 5.28% which will not come due until the estimated completion of the program on March 2023.

Trustee does not oppose the relief requested and notes that Debtor will have completed their bankruptcy prior to Mrs. Leite completing her educational program. Dckt. 40.

DISCUSSION

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." FED. R. BANKR. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the Motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Incur Debt filed by David Franco Leite and Brooke Lee Hayward Leite ("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 David Franco Leite and Brooke Lee Hayward Leite is authorized to incur debt pursuant to the terms of the agreement, Exhibit A, Dckt. 38.

42. **17-20188-E-13 GW-8** **VALOIA/PAMELA LAOLAGI** **Gerald White** **MOTION FOR COMPENSATION FOR GERALD L. WHITE, DEBTORS ATTORNEY(S)** **8-27-21 [92]**

Final Ruling: No appearance at the August 10, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 27, 2021. By the court's calculation, 18 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00).

Under LBR 2002-1(c), inadequate notice was provided to the IRS, where additional notice was required at:

United States Department of Justice
Tax Division
Civil Trial Section, Western Region
Box 683, Ben Franklin Station
Washington, D.C. 20044

In light of the modest amount of fees at issue and the Trustee having provided his analysis and non-opposition, the court shortens the notice period to the 18 days provided. Additionally, the failure to properly serve the Internal Revenue Service is deemed to not be a fatal flaw, and as for the inadequate notice time given, the court waives such deficiency For This Motion Only.

The Motion for Allowance of Professional Fees was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The court has determined that oral argument will not be of assistance in rendering a decision in this matter.

The Motion for Allowance of Professional Fees is granted.

Gerald L. White, the Attorney ("Applicant") for Valoia John Laolagi and Pamela Denise Laolagi, the Chapter 13 Debtor ("Client"), makes a Second and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period February 8, 2021, through August 20, 2021. Applicant requests fees in the amount of $1,980.00 and costs in the amount of $33.00.

Debtor and Applicant signed a Chapter 13 Retainer Agreement on October 7, 2016 which provides for Applicant to be paid for reasonable fees at the rate of $300.00 per hour. Dckt. 96, Exhibit A.

Trustee does not oppose the fees requested and notes that Applicant was previously granted fees and costs totaling $12,040. Dckt. 98.

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?

C. Are the services documented adequately?

D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?

E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

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

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

A review of the application shows that Applicant's services for the Estate include general case administration and responding to Trustee's Motion to Dismiss. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 1.20 hours in this category. Applicant communicated with Debtor and Trustee; reviewed financial information; and submitted the notice regarding Debtor's completion of plan payments.

Motion to Dismiss: Applicant spent 5.40 hours in this category. Applicant communicated with Debtor; met with Debtor; reviewed Trustee's Motion; prepared the response, Declaration, and Exhibits; appeared at the hearing; and reviewed the Civil Minutes and Order denying Trustee's Motion.

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
Gerald L. White	6.60	$300.00	$1,980.00
	0	$0.00	$0.00
Total Fees for Period of Application			$1,980.00

Pursuant to prior Interim Fee Applications the court has approved pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330.

Application	Interim Approved Fees	Interim Fees Paid
First Interim	$12,040.00	$12,040.00
	$0.00	
Total Interim Fees Approved Pursuant to 11 U.S.C. § 331	$12,040.00	

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $33.00 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
CourtCall	$33.00	$33.00
		$0.00
Total Costs Requested in Application		$33.00

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. Second and Final Fees in the amount of $1,980.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

Costs & Expenses

Second and Final Costs in the amount of $33.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

The court authorizes the Chapter 13 Trustee to pay 100% of the fees and 100% of the costs allowed by the court.

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

Fees	$1,980.00
Costs and Expenses	$33.00

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Gerald L. White ("Applicant"), Attorney for Valoia John Laolagi and Pamela Denise Laolagi, Chapter 13 Debtor ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Gerald L. White is allowed the following fees and expenses as a professional of the Estate:
>
> Gerald L. White, Professional employed by the Chapter 13 Debtor
>
> Fees in the amount of $1,980.00
> Expenses in the amount of $33.00
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 13 Debtor subject to final review and allowance pursuant to 11 U.S.C. § 330.
>
> The fees and costs pursuant to this Motion, and fees and costs in the amount of $12,040.00 approved pursuant to prior Interim Application, are approved as final fees and costs pursuant to 11 U.S.C. § 330.
>
> **IT IS FURTHER ORDERED** that the Chapter 13 Trustee is authorized to pay 100% of the fees and 100% of the costs allowed by this Order from the

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

43. **19-22292-E-13** **BICH TRAN** **MOTION TO MODIFY PLAN**
MET-1 **Mary Ellen Terranella** **7-29-21 [32]**

Final Ruling: No appearance at the September 14, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 29, 2021. By the court's calculation, 47 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Bich Thi-Ngoc Tran ("Debtor"), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on August 30, 2021. Dckt. 40. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Bich Thi-Ngoc Tran ("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 29, 2021, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.