UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

October 4, 2022 at 2:00 p.m.

1.	**22-21817-E-13** **DPC-1**	**GARY SPARKS** **Mary Ellen Terranelle**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **9-7-22 [13]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney, on September 9, 2022. 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"), opposes confirmation of the Plan on the basis that:

1. Debtor failed to appear at the First Meeting of Creditors and the meeting was continued to October 6, 2022, and

2. The Plan is not feasible, nor does Debtor appear to be able to comply with the Plan.

    a. Debtor's budget is unrealistic. Schedule J does not reflect any expenses for a vehicle or medical insurance;

    b. Debtor failed to file tax returns;

    c. Debtor fails to provide for the full claims of the Internal Revenue Service ("IRS") and Franchise Tax Board ("FTB");

    d. Including the IRS and FTB's claims would cause completion of the Plan to take approximately 85 months.

DISCUSSION

Trustee's objections are well-taken.

Failure to Appear at 341 Meeting

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

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 is self-employed, earning a net monthly income of $6,933.00, but Debtor's Schedule J does not reflect medical insurance or vehicle expenses. Debtor has failed to explain the lack of expense for these items. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Failure to File tax returns

The IRS and FTB's claims indicate tax returns were not filed for numerous years prior to filing for bankruptcy. Trustee's declaration asserts that Trustee has only received Debtor's 2013 tax return, to date. Declaration, Dckt. 15, filed on September 7, 2022. Filing of the return is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Failure to Provide for a Secured Claim

Debtor's Plan does not provide for the secured claim of FTB. Additionally, there is no indication Debtor plans to provide for FTB outside of the Plan. FTB may request relief from stay which could impact Debtor's ability to finance the Plan.

Failure to Provide for a Priority Claim

Trustee asserts that the IRS filed a claim with a priority amount of $81,063.29 in priority unsecured debt but Debtor only estimated and scheduled the IRS as priority for $30,000.00, and $25,544.00 as unsecured nonpriority. Proof of Claim 9-1, filed on August 29, 2022. The Plan does not provide for all priority debt as required by 11 U.S.C. § 1322(a)(2).

Plan Term is More than 60 Months

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to Trustee, the Plan will complete in 85 months due to proofs of claims filed by the IRS and Franchise Tax Board. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

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

The court shall issue 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.

2. **22-21839-E-13 DPC-1** | **DEVIN WILDMAN** **Carl Gustafson** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 9-7-22 [21]**

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 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, creditors, parties requesting special notice, and Office of the United States Trustee on September 7, 2022. 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"), opposes confirmation of the Plan on the basis that:

A. The Plan is not feasible because Debtor may not be able to afford the Plan Payments.

DISCUSSION

Trustee's objections are well-taken.

Insufficient Plan Payments / Infeasible Plan

Trustee alleges that the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

First, Debtor's Schedule I states that Debtor's Plan relies on a $1,600.00 contribution from Debtor's girlfriend. Plan, Dckt. 1. However, Debtor provided no evidence in the form of a Declaration from their girlfriend or otherwise to substantiate this contribution.

Additionally, Debtor admitted at the meeting of creditors that he has an active business but it is not producing net income. This business does not appear to be indicated on Debtor's Schedule I. Dckt. 1.

Also, Schedule J lists expenses for rental or home ownership of $1,790.48 per month, but the Proof of Claim filed by Caliber Home Loans reflects the total monthly payment as $1,559.47. Proof of Claim 4-1, filed August 30, 2022. Debtor filed an Amended Schedule J, which indicates expenses of $1,559.47, appearing to rectify Trustee's concerns. Additionally, since the payment is only $1,559.47, there appears to be an additional $231.01 that could go towards the Plan payment.

Lastly, Debtor admitted at the meeting of Creditors that he is involved in family law litigation and Schedule J lists no expense for related attorney fees.

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.

3.	**22-21839-E-13 JCW-1**	**DEVIN WILDMAN Carl Gustafson**	**OBJECTION TO CONFIRMATION OF PLAN BY CALIBER HOME LOANS, INC. 9-6-22 [17]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor's Attorney, and the Chapter 13 Trustee, on September 6, 2022. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

Caliber Home Loans, Inc. ("Creditor"), holding a secured claim, opposes confirmation of the Plan on the basis that:

A. Debtor's Plan failed to provide for the arrearage owed in the amount of $1,848.04. Debtor would have to pay at least $30.80 per month to cure via the Plan within 60 months.

DISCUSSION

Creditor's objections are well-taken.

Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts $1,848.04 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.

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 Caliber Home Loans, Inc. ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

4. **20-25255-E-13 DBL-1** **MICHAEL/RENEE RUSSELL** **Bruce Dwiggins** **CONTINUED MOTION TO MODIFY PLAN** **7-23-22 [27]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee, on July 23, 2022. By the court's calculation, 52 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 First Modified Plan is xxxxxxxxxxx.

The debtor, Michael Dale Russell and Renee Sue Russell ("Debtor"), seeks confirmation of the First Modified Plan due to unforeseeable financial events which occurred after confirmation of Debtor's original plan. These events include changes in Debtor's employment, resulting in pay-cuts, and vehicle repair costs. Declaration, Dckt. 31. The Modified Plan provides for unsecured claims to be paid through monthly payments of $1,030.00 for 60 months, and a 100% percent dividend to unsecured claims totaling $38,938.52. Modified Plan, Dckt. 29. 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, 2022. Dckt. 35. Trustee opposes confirmation of the First Modified Plan (the "Plan") on the basis that:

A. The Plan is not feasible because:

1. Debtor filed two plans (Dckts. 29, 32), making it difficult to determine which plan Debtor intends to be confirmed. Procedural issues must be addressed before Trustee can confirm.

2. The Plan omits payments for several unsecured, nonpriority claims.

DISCUSSION

Feasibility of Plan

Trustee alleges that the proposed First Modified Plan is not feasible, and the Trustee cannot recommend confirmation until the existing procedural issues have been addressed. 11 U.S.C. § 1325(a)(1).

Two Plans Filed

Trustee objects to confirmation of the Plan on a procedural basis. Debtor filed two plans, which appear to be identical, on July 23, 2022. Dckts. 29, 32. The Plan filed under Docket No. 29 includes only the Plan, itself, while the Plan filed under Docket No. 32 includes the Plan and Exhibits, including Supplemental Schedules I and J, with the omission of the cover sheet. Trustee notes that Supplemental Schedules I and J, along with the required cover sheet, were filed separately, July 22, 2022. Dckt. 25. Clarification is needed regarding which Plan is to be confirmed.

Section 7.02 Typographical Error

Section 7.02 of the Plan lists payments which have been made thus far to Creditors. Section 7.02 omits payments to unsecured creditor CEP America California and the unsecured portions of Franchise Tax Board and Internal Revenue Services claims. Section 7.02 should be amended to include:

1. CEP America California, unsecured claim, $154.19

2. Franchise Tax Board, unsecured portion, $185.43

3. Internal Revenue Service, unsecured portion, $143.99.

Continuance of Hearing

At the hearing, counsel appearing for Debtor, another attorney in the law firm appearing at the hearing in place of the lead counsel, stated that she did not have the answers to the Trustee's points and that the lead counsel was on vacation but would be returning shortly. She requested that the court grant a short continuance so that lead counsel could get back in the office and get this promptly addressed. The Trustee's counsel agreed to the requested continuance.

October 4, 2022 Hearing

At the hearing, XXXXXXXXXXX.

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, Michael Dale Russell and Renee Sue Russell ("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 First Modified Plan is **xxxxxxxxxxxx.**

5. 22-20594-E-13 MJD-3 | DAVID/KATHLEEN HALFORD | MOTION TO INCUR DEBT
Matthew DeCaminada | 9-8-22 [83]

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, and Office of the United States Trustee on September 8, 2022. By the court's calculation, 26 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.

The Motion to Incur Debt is denied.

David Alan Halford and Kathleen Louise Halford ("Debtor") seeks permission to purchase a 2013 Subaru Crosstrek, with a total purchase price of $15,895.00 and monthly payments of $248.70 to Land Rover Rocklin over 6 years with a 28.22% fixed interest rate.

Trustee's Opposition

David Cusick, Chapter 13 Trustee, filed an opposition on September 15, 2022. Dckt. 88. Chapter 13 Trustee opposes Debtors' Motion to Incur New Debt on the grounds that:

A. The financing terms and conditions show that the payments are semi-monthly so the payment for the car is potentially higher than the terms stated in the motion.

B. Proposed interest rate of 28.22% is high and is not in the Debtor's best interest.

C. Debtors failed to file a supplemental Schedule J separately from Exhibit B.

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).

Best Interest of Debtor

Here, the transaction is not in the best interest of Debtor. The financing terms and conditions calls for a substantial interest charge—28.22%. It is unclear to the court how in good faith Debtor could propose to purchase a vehicle with such a high interest rate of 28.22%. A debtor driven to seek the extraordinary relief available under the Bankruptcy Code is hard pressed to provide a good faith explanation as to how a "reward" for filing bankruptcy is to purchase a 2013 Subaru Crosstrek and attempt to borrow money at a 28.22% interest rate.

Additionally, as Trustee indicates, the financing terms for the vehicle are different than the terms stated in the motion. From the court's review, the financing terms on Exhibit A, Dckt. 85, indicate Debtor is to pay semi-monthly payments of $248.70. This would be a monthly payment of $497.40. However, Debtor's Motion, Dckt. 83, indicates only a monthly payment of $248.70. As Trustee indicates, there appears to be enough net income to provide for the higher payment plan. Amended Schedule I and J, labeled as both an Amended Filing and a Supplement, Dckt. 54, filed June 15, 2022, indicate as of the date June 15, 2022, Debtor has a net income of $3,918.68. Debtor's Plan payment is only $1,800.00. Amended Plan, Dckt. 56.

Also, Debtor has attached as Exhibit B a "Proposed" Supplemental Schedule J. Dckt. 85. It appears to the court this proposal is what Debtor will file, subject to approval of this Motion. The court

notes, however, this proposal states car payments are only $248.70. If the car payments are $497.40, the Supplemental Schedule J should be updated prior to filing on the docket to reflect the proper amount. [Fn.1.]

FN. 1. Seeing the 28.22% interest rate for this consumer debtor, the court's interest was piqued. Going to the Drivetime website, it provides the following helpful tip for consumers about interest rates:

> DriveTime offers interest rates as low as 5.9%, on approved credit. Maximum interest rates are typically determined by each state's usury limit laws (maximum allowable interest rate by law). One thing that is different with DriveTime is that you work directly with the Sales Advisor to build your loan. This way, you will be able to find the right vehicle, down payment and term to get the rate you are looking for. To find your approval amount, start your approval online or browse our expansive inventory.

https://blog.drivetime.com/drivetime-faqs-helpful-tips/#:~:text=DriveTime%20offers%20interest%20rates%20as,Advisor%20to%20build%20your%20loan.

The Motion is denied.

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 Alan Halford and Kathleen Louise Halford ("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 Incur Debt is denied.

6. **15-20002-E-13 FF-10** **BRIAN SANCHEZ** **Gary Fraley** **MOTION FOR CONTEMPT** **7-29-22 [190]**

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 July 29, 2022. By the court's calculation, 69 days' notice was provided. 28 days' notice is required.

The Motion for Contempt 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 Contempt is granted.

The present Motion for Contempt for Violation of the Bankruptcy Discharge provided by 11 U.S.C. § 524 and request for compensatory and punitive damages and attorney's fees and costs, has been filed by Debtor Brian Kenneth Sanchez ("Movant"). The claims are asserted against MAMI Group, Inc, MGI Motors, and Ahmed Mami (individually and on behalf of MAMI Group, Inc. and MGI Motor) ("Respondent").

REVIEW OF MOTION

In asserting this claim pursuant to 11 U.S.C. §§ 524, 105(a), Movant states with particularity the following grounds for relief:

1. Respondent refused to deliver title to a vehicle repaid in full with interest as provided for through the Chapter 13 Plan. Motion, Dckt. 190 at ¶ 1;

2. Pursuant to California Vehicle Code § 5753, it is unlawful to fail to transfer ownership within fifteen (15) days after receiving payment in full of a security interest. *Id.* ¶ 21;

3. Respondent demanded more money from Debtor on the discharged debt. *Id.* ¶ 1;

4. Respondent asserted the vehicle is not paid off. *Id.* ¶ 13;

5. It was not until June 10, 2022, after Debtor reopened this case to file the instant contempt action, that Respondent delivered title of the vehicle to Movant. *Id.* ¶ 17;

6. Although Movant now has title, Movant has been under "extreme distress" and has incurred direct damages from the delay:

   a. Movant asserts they could not sell the vehicle without title, it sat in front of their home, reducing "curb appeal" and causing Debtor to sell their home for $5,000.00 to $20,000.00 less than they could have otherwise, and caused Movant to incur storage fee costs. *Id.* ¶ 18;

7. Movant incurred attorney's fees and costs in trying to get Respondent to comply with their legal obligations. *Id.*

Declaration of Movant-Debtor

Movant-Debtor's Declaration states it took Movant approximately two (2) years to get title back from Respondent. Dckt. 192 ¶ 5. Movant contests the vehicle was inoperable and sat in front of their home which cause Debtor to sell the home for as much as $20,000 less than had it not been there. *Id.* ¶ 8. It was not until after Movant sold their home that they were able to find someone who agreed to store the vehicle for a monthly fee of $100.00. *Id.* ¶ 9. The vehicle incurred storage fees from November 2021 to June 2022 when title was given back to Movant. *Id.*

Movant-Debtor's testimony includes contacting Respondent about why the clear title had not been delivered following the completion of the Chapter 13 Plan, stating (**Bolded** emphasis added):

> 5. I made my last Chapter 13 Plan payment in April 2020. I expected to get the title to my vehicle from MGI Motors shortly after that. After not receiving anything, **I contacted MGI Motors personally on or about July 13, 2020** and asked why I had not received the title to my vehicle. The **person I spoke with told me that they had received no payments from the Chapter 13 trustee since 2016.**
>
> 6. I then **called again two more times in November 2020** after my Bankruptcy Discharge, wanting to know where title was. The first time, I spoke with a receptionist who informed me that someone would get back to me. When **nobody called me back**, I then placed a second call later in the month and was told that the owner was unavailable and would call me back
>
> 7. Then in **December 2020, I called again** and spoke with the receptionist, who got angry with me. **She told me that the vehicle was not paid off, that I still**

> **owed them money**, and that the **owner would not speak to me until the debt was paid off.** I was told that **I needed to pay them** in order to even speak with the owner regarding title.

Dckt. 192.

This testimony provides clear evidence that Respondent knew of the bankruptcy, knew Respondent's claim was being paid through the bankruptcy plan via the Chapter 13 Trustee.

Declaration of Blanca Garza

Movant-Debtor has also provided the Declaration of Blanca Garza, an employee at Movant-Debtor's Counsel's law firm. Dckt. 194. Ms. Garza indicates that on February 5, 2021, she hand delivered a copy of the demand letter to Respondent's office requesting title be transferred to Movant-Debtor.

Declaration of Movant-Debtor's Counsel

Movant-Debtor's Counsel filed a Declaration indicating they sent numerous demands to Respondent requesting title be transferred to Movant-Debtor. Dckt. 195. Movant-Debtor's Counsel has spent nearly two years to get Respondent's to comply with legal obligations.

Counsel testifies as to several years of demand letters and communications to get Respondent to release its lien and provide Movant-Debtor with clear title.

This Bankruptcy Case was reopened on May 27, 2022 (Order, Dckt. 183), and Counsel further testifies that on June 10, 2022 (approximately two weeks later), title to Movant-Debtor's vehicle was delivered by Respondent.

Counsel concludes that now, after spending almost two years without any action by Respondent and then getting a quick response within two weeks of merely reopening this case, Movant-Debtor and counsel seek damages for their two years of frustration.

Exhibits Filed

Additionally, Movant has provided exhibits documenting attempted communications with Respondent. Exhibits G-I, Dckt. 193. Upon the court's review:

Exhibit G:	Letter dated January 18, 2021, from Movant's Counsel to Respondent stating the bankruptcy was discharged on October 27, 2020, and Movant requests title to the vehicle.
Exhibit H:	Letter dated February 5, 2021, and sent by USPS First Class Mail and hand delivered from Movant's Counsel to Respondent's General Manager, Faisal Ashmadzai, requesting title to the vehicle.

Exhibit I: Email dated January 5, 2021, and sent to Respondent's Manager "Adam," informing Respondent of Debtor's discharge and requesting title to the vehicle and an Email dated February 4, 2021, and sent to Respondent informing them of Debtor's discharge and requesting title to the vehicle.

Legal Basis Stated by Movant-Debtor For Relief Requested

Movant-Debtor first directs the court to the provisions of 11 U.S.C. § 524(a)(2), in which Congress creates the statutory discharge injunction. The court is then pointed to the provisions of 11 U.S.C. § 524(a)(2) which state (emphasis added):

> (i) The **willful failure of a creditor to credit payments received under a plan confirmed under this title**, unless the order confirming the plan is revoked, the plan is in default, or the creditor has not received payments required to be made under the plan in the manner required by the plan (including crediting the amounts required under the plan), **shall constitute a violation of an injunction under subsection (a)(2) if the act of the creditor** to collect and failure to credit payments in the manner required by the plan **caused material injury to the debtor**.

Movant-Debtor ties in California law, Vehicle Code § 5753, providing that within fifteen days after receiving payment to satisfy an obligation secured by a vehicle, the creditor must release its security interest or deliver the certificate of ownership.

Movant-Debtor then directs the court to the provisions of 11 U.S.C. § 105(a) and various cases addressing violations of the discharge injunction. The court addresses these below.

LEGAL STANDARD

Violation of the discharge injunction is addressed by the court's through civil contempt proceedings under the court's powers granted in 11 U.S.C. § 105. 4 COLLIER ON BANKRUPTCY ¶ 524.02(C) (16TH EDITION). This is a core proceeding (*Id.*) and is raised by motion filed in the bankruptcy case. Fed. R. Bankr. P. 9020; *Barrientos v. Wells Fargo Bank, N.A.*, 633 F.3d 1186, 1190-1191 (9th Cir. 2011).

A bankruptcy judge has the authority to issue a civil contempt order. *Caldwell v. Unified Capital Corp. (In re Rainbow Magazine)*, 77 F.3d 278, 283–85 (9th Cir. 1996). Collier on Bankruptcy addresses a Bankruptcy Judge's contempt power:

> The contempt power is most often used to redress violations of statutory injunctions or prohibitions, such as the automatic stay of section 362,2 or the discharge injunction of section 524.3 Courts have held that, when applicable, " '[t]he standard for finding a party in civil contempt is well settled: The moving party has the burden of showing by clear and convincing evidence that the contemnors violated a specific and definite order of the court.' … Because the 'metes and bounds of the automatic stay are provided by statute and systematically

> applied to all cases,' … there can be no doubt that the automatic stay qualifies as a specific and definite court order."

2 Collier on Bankruptcy P 105.02 (16th 2022) (citing *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1190–91 (9th Cir. 2003); see also *Renwick v. Bennett (In re Bennett)*, 298 F.3d 1059 (9th Cir. 2002).

The Supreme Court has recently addressed the issue of issuing contempt orders due to a violation of a bankruptcy discharge order. *See Taggart v. Lorenzen*, 139 S. Ct. 1795 (2019). In *Taggart*, the Supreme Court tightened up the violation of the discharge contempt determination to an objective standard:

> [A] court may hold a creditor in civil contempt for violating a discharge order if there is **no fair ground of doubt as to whether the order barred the creditor's conduct**. In other words, civil contempt may be appropriate if there is no objectively reasonable basis for concluding that the creditor's conduct might be lawful.

Id. at 1799 (emphasis added). Additionally, the Supreme Court confirmed the court's authority for such action is found through the provisions of 11 U.S.C. §§ 524(a)(2), 105(a):

> Here, the statutes specifying that a discharge order operates as an injunction," §524(a)(2), and that a court may issue any "order" or "judgment" that is "necessary or appropriate" to "carry out" other bankruptcy provisions, §105(a), bring with them the "old soil" that has long governed how courts enforce injunctions.

Id. at 1801.

The Supreme Court also discussed the civil contempt "old soil" in which the contemp for violation of the discharge injunction is planted, stating:

> Under traditional principles of equity practice, courts have long imposed civil contempt sanctions to "coerce the defendant into compliance" with an injunction or "compensate the complainant for losses" stemming from the defendant's noncompliance with an injunction. *United States v. Mine Workers*, 330 U. S. 258, 303-304, 67 S. Ct. 677, 91 L. Ed. 884 (1947); see D. Dobbs & C. Roberts, Law of Remedies §2.8, p. 132 (3d ed. 2018); J. High, Law of Injunctions §1449, p. 940 (2d ed. 1880).

Id.

Transfer of Title After Full Satisfaction of Security Interest

As referenced above, pursuant to California Vehicle Code § 5753, within fifteen (15) business days after receiving payment in full for the satisfaction of a security interest, the legal owner (creditor) shall release its security interest and transfer the vehicle's certificate of ownership to the

transferee (debtor). It is unlawful to fail or neglect to "endorse, date, and deliver the certificate of ownership . . . ." CAL. VEH. CODE § 5753(a).

DISCUSSION

Upon review of all of the evidence provided to the court, and in review of the Docket, the court finds there is no "objectively reasonable basis for concluding that [Respondent's] conduct might be lawful." *Taggart*, 139 S. Ct. at 1799.

1. Debtor filed Respondent's Proof of Claim on September 24, 2015, after, months prior, Movant requested Respondent file their own claim. Motion, Dckt. 190 at ¶ 6, Proof of Claim 2-1.

2. Respondent was treated as a Class 2 Creditor throughout the life of the Plan. Amended Plan, Dckt. 141. Respondent did not oppose the confirmation of the Plan and was given notice on November 27, 2018. Certificate of Notice, Dckt. 156.

3. The provisions of the Plan bound Movant and Respondent, and vested the Property with Movant. 11 U.S.C. § 1327; Amended Plan, Dckt. 141.

4. Movant completed their Plan on April 30, 2020. Trustee's Final Report and Account, Dckt. 170. Respondent received Notice. Certificate of Service, Dckt. 173.

5. Movant received their discharge pursuant to 11 U.S.C. § 1328(a) on October 27, 2020. Dckt. 178. Respondent received Notice. Certificate of Service, Dckt. 179.

6. In addition, Movant made multiple attempts to communicate with Respondent and inform them of Movant's discharge to receive title back from Movant.

Upon Movant receiving their discharge, there is no evidence that Respondent could have reasonably been uncertain whether their debt was discharged. Pursuant to California law, Movant should have received title to the vehicle within fifteen (15) days after Respondent received their last Plan payment, not almost two years later. Under the totality of circumstances, it is clear to the court that for roughly two years, Respondent's actions were unlawful and in violation of the discharge order.

Therefore, pursuant to 11 U.S.C. § 105(a), the court finds Respondent in contempt for violating the discharge injunction arising under 11 U.S.C. § 524(a)(1).

Remedies Available to Debtor

Civil contempt is the normal sanction for violation of the discharge injunction. 2 Collier on Bankruptcy P 105.02 (16th 2022). As for remedies available, "compensatory civil contempt allows an aggrieved debtor to obtain compensatory damages, attorneys fees, and the offending creditor's compliance with the discharge injunction." *Walls v. Wells Fargo Bank, N.A.*, 276 F.3d 502, 507 (9th

Cir. 2002). "[T]he contempt authority conferred on bankruptcy courts under § 105(a) is a civil contempt authority. As such, it authorizes only civil sanctions as available remedies." *Knupfer v. Lindblade* (*In re Dyer*), 322 F.3d 1178, 1192 (9th Cir. 2003). As for punitive damages, "criminal contempt sanctions are not available under § 105(a). Section 105(a) contains no explicit grant of authority to award punitive damages. Rather, the language of § 105(a) authorizes only those remedies "necessary" to enforce the bankruptcy code." *Id.* at 1193.

The court notes, Movant has cited a 2012 Ninth Circuit Bankruptcy Appellate Panel decision (Motion, Dckt. 190 ¶ 27) which states, "[i]f a bankruptcy court finds that a party has willfully violated the discharge injunction, the court may award actual damages, punitive damages and attorney's fees to the debtor." *Nash v. Clark Cty. Dist. Atty's. Office* (*In re Nash*), 464 B.R. 874, 880 (B.A.P. 9th Cir. 2012) (citing *Espinosa v. United Student Aid Funds*, 553 F.3d 1193, 1205 n.7 (9th Cir. 2008), which in footnote 7 cites to 2 Collier on Bankruptcy Manual (3d rev. ed.) ¶524.02[2][c]).

Collier cites to an Eleventh Circuit case, *Hardy v. IRS (In re Hardy)*, 97 F.3d 1384 (11th Cir. 1996), as the only Circuit authority for the contempt sanctions to include punitive sanctions, in addition to the compensatory sanctions.

However, in *Hardy*, while using the term "punitive" sanctions, the Eleventh Circuit makes it clear that under 11 U.S.C. § 105(a) the sanctions are not punitive but "corrective" or "compensatory." In addressing the "punitive" sanctions, there not being compensatory sanctions at issue in *Hardy*, the Eleventh Circuit stated:

> Sanctions Available Under §§ 105
>
> 1. Coercive Sanctions
>
> The court may only impose sanctions for contempt that are coercive and not punitive. *Jove*, 92 F.3d at 1557-58. In determining whether a sanction for contempt is coercive, the court must ask "(1) whether the award directly serves the complainant rather than the public interest and (2) whether the contemnor may control the extent of the award." *Id*. If the court finds, as in *Jove*, that the appellant primarily seeks monetary damages in the form of a fixed non-compensatory fine, then the court may not order such monetary damages, as they are punitive and not coercive.

Hardy by & Through IRS v. United States (In re Hardy), 97 F.3d at 1390.

Collier has, however, cited Ninth Circuit authority under a court's power pursuant to 11 U.S.C. § 105(a) to "vindicate violations of the discharge injunction of section 524." 2 Collier on Bankruptcy P 105.02 (16th 2022). With respect to punitive damages and a court's § 105(a) power, Collier addresses what appears to be contradicting rulings from the Ninth Circuit:

> With respect to remedies for any contempt found, the Court of Appeals for the Ninth Circuit has stated that because "compensatory civil contempt allows an aggrieved debtor to obtain compensatory damages, attorneys fees, and the

> offending creditor's compliance with the discharge injunction … .contempt is the appropriate remedy and no further remedy is necessary."

2 Collier on Bankruptcy P 105.02 (16th 2022) (citing *Walls v. Wells Fargo Bank, N.A.*, 276 F.3d 502, 507 (9th Cir. 2002); *Ocwen Loan Servicing, LLC v. Marino* (*In re Marino*), 577 B.R. 772, 782–83 (B.A.P. 9th Cir. 2017)), appeal filed, No. 18-60005 (Jan 23, 2018); *In re Eppolito*, 583 B.R. 822, 828–29 (Bankr. S.D.N.Y. 2018); *see Bessette v. Avco Fin. Servs.*, 230 F.3d 439, 445 (1st Cir. 2000) (collecting cases), cert. denied, 532 U.S. 1048, 121 S. Ct. 2016, 149 L. Ed. 2d 1018 (2001).

> The same court, however, has also held that courts must limit punitive damages to "relatively mild, non-compensatory fines rather than serious punitive sanctions."

Id. (citing *Knupfer v. Lindblade* (*In re Dyer*), 322 F.3d 1178, 1191 (9th Cir. 2003)); *In re Marino*, 577 B.R. at 788).

Collier's second citation referencing that courts have allowed mild, noncompensatory damages under 11 U.S.C. § 105(a) is a Ninth Circuit Bankruptcy Appellate Panel decision, *In re Marino*. In coming to their conclusion that noncompensatory damages may be allowed under 11 U.S.C. § 105(a), the Appellate Panel cites *In re Dyer*, "[t]he Ninth Circuit has authorized 'noncompensatory fines,' which are simply punitive damages by another name. However labeled, any such award must be 'relatively mild.'" *Ocwen*, 577 B.R. at 788-89. For the reasons stated in the preceding paragraph, this court is not convinced of the Appellate Panel's reading of *In re Dyer*. This court, rather, in reading *In re Dyer*, finds under the Ninth Circuit, only "compensatory damages, attorney fees, and the offending creditor's compliance" are allowed in civil contempt actions under 11 U.S.C. § 105(a). *In re Dyer*, 322 F.3d at 1193.

These decisions all point to the 11 U.S.C. § 105(a) contempt power to: (1) allow for compensatory damages cause by a violation of the discharge injunction, and (2) coercive punitive damages to alter conduct but not impose a "penalty" disconnected from correcting conduct violating the Bankruptcy Code.

Damages Awarded

Movant requests (1) compensatory damages; (2) punitive damages, no less than $100,000 per respondent; and (3) attorney's fees and costs, to be requested by separate motion. The court addresses these separately.

Compensatory Damages

The Motion states in the prayer that the compensatory damages requested are in the amount, "For the court to order compensatory damages to Debtor." Motion, p. 6:24; Dckt. 190. Debtor could not state an amount of compensatory damages

However, in the body of the Motion reference is made to some damages.

Impact to Value of Real Property Due to
Loss of "Curb Appeal"

First, the Motion states in Paragraph 18 that because Movant Debtor could not dispose of the vehicle, and had to leave it sitting out in front of his house. It is asserted that Movant-Debtor could not sell the vehicle, nor was able to have it moved/towed away.

Thus, because it was sitting in front of Movant-Debtor's house, and Movant-Debtor was selling his house, it resulted in Debtor selling his home for $5,000 to $20,000 less that he could have otherwise.

Further, that somehow the violation "have damaged Debtor's credit, resulting in Debtor now living with his mother rather than buy or renting another property.

For evidence of these damages, Debtor provides his Declaration. The pertinent testimony by Debtor for these damages allegations consists of:

> 8. As a result of the long delay in getting title to the vehicle back, I have suffered financially. I sold my home and moved in November, 2021. Since the vehicle is not operable, it could not be removed. I could not to sell the vehicle, or even donate it, because nobody will take custody or ownership of a car without its title. As such, it sat in front of the house. Because of that, I was forced to accept a lower offer on the home. I am informed and believe and thereon allege that the inoperable vehicle lowered my home's "curb appeal", and that I sold the home for as much as $20,000 less than had it not been there.
>
> 9. After the sale of the home, I was finally able to find someone who agreed to move and store the vehicle for a monthly fee of $100.00. The vehicle was stored by them from November 2021 until June 2022 when my attorney was finally able to force MAMI to hand over title.

Declaration, Dckt. 192.

This testimony is very ephemeral evidence of damages. Movant-Debtor provides no information about the sale of the home and how it sold for less because a vehicle - that he the seller would remove upon sale - cause a reduction of $5,000 to $20,000 in the sales price. There is nothing presented to the court that a seller's vehicle in front of a house negatively impacts the "curb appeal."

Conspicuously absent is any testimony by the Movant-Debtor's real estate agent or other expert about the loss of value due to curb appeal being diminished by a seller's vehicle being parked in front of the home being sold.

In reading the Declaration, the court notes that Debtor admits that he has no personal knowledge as to the value of the home and what the possible loss could be, but only was "informed and believes," and then could only "allege" and not provide any personal knowledge testimony as required by Federal Rule of Evidence 602.

While making allegations for which no then known evidence exists can be permitted in a motion or complaint (subject to the Fed. R. Civ. P. 11 and Fed. R. Bankr. P. 9011 certifications and sanctions), there is no basis for having "informed and believed evidence." Given the great experience of

Movant-Debtor's counsel, the court is confident that if any such evidence existed, it would have been presented to the court .

Movant-Debtor's testimony lacks any explanation as to why he could not have had the vehicle towed to a friend or family member's house (possible his mother with whom he now lives). In looking at the court file, Debtor has not filed a change of address notice with the court, so his address continues to be listed as the Gladwin Way home. Presumably, this is the home he sold (it being his residence as stated on the Petition and Schedule A/B; Dckt. 1). It may have been that he now lives only blocks away from his former residence. Alternatively, if there was a good five figure dollar difference to be made by not having the vehicle in front of the home Movant-Debtor was selling, then a friend could well have let it be put at the friends property for a "few of those additional Benjamins."

From the evidence presented, Movant-Debtor has not presented the court with any credible evidence of any loss in value in the sale of his residence caused by Respondent's violation of the discharge injunction. Movant-Debtor's belief that he could have sold his residence for more is not credible, personal knowledge testimony evidence of a decrease in value.

No compensatory damages are awarded Movant-Debtor relating to the sale of his residence. Given how simple it would be to obtain the services of a real estate professional to provide an opinion on value and provide expert testimony as to the impact the vehicle had on value, the absence of such is telling that no such damages exist.

Damages Incurred from "Storage Fees"

Movant's second request for compensatory damages includes damages resulting from storing the vehicle from November 2021 to June 2022 (eight months) for $100 per month. Upon a quick calculation, this would equal roughly $800 in storage fees. Movant, however, has not provided a breakdown of costs or any total dollar amount for the storage fees. Additionally, Movant provides no evidence in the form of exhibits or otherwise as to who stored the vehicle, any receipts evidencing the storage, or even an address as to where the vehicle was stored. The only evidence of the vehicle being sold includes the Declaration of Movant, in which they state:

> 9. After the sale of the home, I was finally able to find someone who agreed to move and store the vehicle for a monthly fee of $100.00. The vehicle was stored by them from November 2021 until June 2022 when my attorney was finally able to force MAMI to hand over title.

Declaration, Dckt. 192 ¶ 9. The court does not find this limited information sufficient to award compensatory damages for storing the vehicle.

Not only is Movant-Debtor represented by very experienced bankruptcy counsel, but this counsel recently had another case in which he presented evidence of storage expenses for a vehicle. He clearly identified the person who was storing the vehicle, what was charged, and the rational basis for needing the storage and reasonableness of the charges in the unrelated case.

Thus, again, the court concludes that if any such evidence existed of such storage, fees paid, expenses incurred, and the reasonableness of such storage, that evidence would have been presented.

No compensatory damages are awarded Movant-Debtor for any storage fees.

Movant-Debtor's Problematic Own Conduct and Strategy

Movant-Debtor provides clear, personal knowledge testimony that he was first aware of Respondent not complying with the Bankruptcy Plan and Bankruptcy Code, and violating the discharge injunction, in July 2022. Movant-Debtor Dec., ¶ 5; Dckt. 192. Movant-Debtor was represented by his experienced bankruptcy counsel at that time.

Movant-Debtor testifies that in November 2020 and December 2020 he continued to communicate with Respondent and knew of their continuing failure to deliver clear title to him. *Id*.; ¶¶ 6, 7.

Movant-Debtor's counsel testifies in January 18, 2021, he sent a written demand to Respondent to deliver clear title to Movant-Debtor. Counsel Dec., ¶ 8; Dckt. 195. Then Counsel sent a second demand letter on February 5, 2021. *Id*., ¶ 9. These letters are clear, constructive communications, requesting the clear title, as well providing for a constructive dialogue of Respondent was not going to comply. The letters also forewarn Respondent of the possibility of these contempt proceedings.

Thus, as of February 5, 2021, Counsel's letter makes it clear that Movant-Debtor is ready to move promptly in the Federal Court to have Respondent held in contempt for violation of the discharge injunction and obtain Movant-Debtor's clear title.

Unfortunately, the evidence shows that Movant-Debtor then did nothing with respect to what Movant-Debtor and his counsel had clearly identified as a violation of the discharge injunction. Movant-Debtor did not come forward to this court seeking the relief easily obtained.

Rather, the evidence shows Movant-Debtor choosing to ignore the violation of the discharge injunction, and instead proceed with selling his residence, which did not occur until November 2021 (Movant-Debtor Dec., ¶ 8; Dckt. 192). This is nine months after the "Do or Die" from Movant-Debtor's counsel, stating that if clear title was not delivered by February 12, 2021; then:

> Should you continue to ignore our requests, I will be forced to seek an **Order holding on in contempt of a Federal Bankruptcy Court Order** for your refusal to comply with your obligations under Federal and State laws. Should I be forced to do so, I will seek **sanctions for my attorney fees and costs** associated with such a proceeding as well as damages to my client for the stress involved as a result of **your violation of the Court's Order of Discharge**.
>
> The Bankruptcy Court will also have the US Marshall serve you with an **"Order to Show Cause" as to why the Judge should not hold you in contempt of his order.** You will be required to appear at that hearing, or have a warrant for your arrest issued. If you fail to appear, the Bankruptcy Judge will have the Federal Marshall arrest you and put you in jail pending the Judge having you appear before him.

Exhibit H; Dckt. 193. Putting aside some of the hyperbole [Fn.1.] this letter clearly demonstrates that Movant-Debtor and his counsel were fully engaged and ready to act in February 2021 to address this violation of the discharge injunction and protect Movant-Debtor's rights and property – if they thought such was necessary.

FN. 1. Movant's Counsel takes great liberties as to what he will, and has the power, to make the judge do. Examples include: (1) saying that the judge will send the U.S. Marshal down on Faisal Ashmadzai (2) saying that the judge will issue a warrant for the arrest of Faisal Ashmadzai, and (3) that the judge will have Faisal Ashmadzai jailed. Movant-Debtor's counsel states these are automatic, mindless, acts of a judge, as if it is Movant-Debtor's counsel who orders a federal judge to act.

To the extent that Movant-Debtor had any credible evidence that the vehicle being in front of the house for the November 2021 sale of the residence had any negative impact on the sales price, such was a result of Movant-Debtor's failure to act in January 2021, and even earlier. The same is true with respect to storage fees, if any.

The court also notes that in addition to the "simple" contempt proceedings that Movant-Debtor and Debtor's Counsel had in place as of February 2021, to the extent that Respondent continued to cloud title to the vehicle, Movant-Debtor could have commenced an adversary proceeding in conjunction with the Motion for Contempt (possibly consolidating both into the adversary proceeding) for the court to issue a judgment determining that Respondent's lien and interest in the vehicle were void (the secured obligation having been paid in full) and that Movant-Debtor was the title owner free and clear, so Movant-Debtor could take that judgment (as any other quite title judgment) and to the California DMV and obtain clear title.

While this would require some additional attorney's fees, as this court has addressed in the real estate title context, usually such defendants have assets (possibly a lot full of cars and a big stack car sale contracts) and that the sophisticated consumer counsel who understanding not only federal litigation law, but the complex interplay between the Bankruptcy Code and State law, (which counsel has an hourly rate commensurate with such complex issues) will recover such fees for their client usually pursuant to the contract or statute. *See Martin v. CitiFinancial Servs. (In re Martin)*, 491 B.R. 122, FN. 18.

Emotional Distress Damages

In the generic, form prayer not requesting specific relief (other than not less than $100,000), there is the request for "compensatory damages," though the type of damages nor dollar amounts are stated. Though not clearly denominated as damages, the Motion in paragraph 18, does include the phrase, "Debtor has been under extreme distress due to Respondents' refusal to comply with their obligations under the law." Dckt. 190. This sounds in the nature of "emotional distress," for which the court may properly award damages.

For a debtor to state a claim for emotional distress damages, the individual must (1) suffer significant harm, (2) clearly establish the significant harm, and (3) demonstrate a causal connection between the significant harm and the conduct of the person violating the automatic stay or discharge injunction. [Fn.2.] Medical evidence of emotional distress is not required; the testimony of family

members, friends, and co-workers is sufficient to establish an emotional distress claim. [Fn.3.] In some cases no corroborating evidence is required. An example cited in Dawson is where the egregious conduct was the creditor pretending to hold a gun to the debtor's head. [Fn.4.] Additionally, the court in Dawson stated that even when the conduct was not egregious, the court could award emotional distress damages where the circumstances make it obvious that a reasonable person would suffer emotional harm, such as the emotional distress of having to cancel a child's birthday party because the debtor's checking account was frozen. [Fn5.]

FN. 2. *Dawson v. Wash. Mut. Bank (In re Dawson)*, 390 F.3d 1139, 1149 (9th Cir. 2004).

FN. 3. *Id.*, citing *Varela v. Ocasio (In re Ocasio)*, 272 B.R. 815, 821-22 (B.A.P. 1st Cir. 2002) (holding that testimony of debtor's wife was sufficient to support an award of medical damages without medical testimony).

FN. 4. *Dawson, 390 F.2d at 1149* (citing *Wagner v. Ivory (In re Wagner)*, 74 B.R. 898, 905 (Bankr. E.D. Pa. 1987)).

FN. 5. *Dawson*, 390 F.2d at 1149 (citing *United States v. Flynn (In re Flynn)*, 185 B.R. 89, 93 (S.D. Ga. 1995) ($5,000.00 award of emotional distress damages because 'it is clear that the appellee suffered emotional damages' when she was forced to cancel her son's birthday party because her checking account was frozen)); see also Sternberg, 595 F.3d at 943.

While less than robust, Movant-Debtor provides personal knowledge testimony that Respondent's failure to deliver clear title upon the completion of the Plan and violation of the discharge injunction (failure to deliver title and demand for more money) caused emotional distress to Movant-Debtor. This testimony includes:

> "I expected to get the title to my vehicle from MGI Motors shortly after [completing the Chapter 13 Plan]."
>
> Respondent telling Movant-Debtor that no payment had been received since 2016, "In a panic, I contacted my attorney's office, which then started the two year process of getting title from MGI Motors."

Movant-Debtor Declaration, ¶ 5; Dckt. 192.

> Movant-Debtor made multiple calls to Respondent in November 2020 concerning obtaining clear title to the vehicle, was told that someone from Respondent would return the call, and for which Respondent failure to return the calls.

Id., ¶ 6.

> In December 2020, when Movant-Debtor contacted Respondent, "and spoke with the receptionist, who got angry with me. She told me that the vehicle was not paid off, that I still owed them money, and that the owner would not speak to me until the debt was paid off. I was told that I needed to pay them in order to even speak with the owner regarding title.

Id., ¶ 7. At this point, Movant-Debtor's testimony include "anger" from Respondent, and then the condition that for anyone at Respondent to talk with Movant-Debtor about the discharge injunction violation, Movant-Debtor would have to pay Respondent more money.

In looking at the above, these are facts and circumstances for which no expert is necessary to show that Respondent's conduct could cause emotional distress. Movant-Debtor had just completed five years of performing his Chapter 13 Plan. While of great benefit to Movant-Debtor, federal court proceedings are not "fun," the bankruptcy process is very intrusive, and there is a great sense of relief and accomplishment when a plan is completed. That relief was then dashed with a "no car for you unless you give us more money" response.

This emotional distress spanned over the months in the Summer of 2020 (the Plan being completed in April 2020) and Movant-Counsel's February 2021 "Do or Die" letter. By that time Movant-Debtor knew he was in the right, his counsel had done the groundwork, and at the snap of Movant-Debtor's and Debtor's counsel's fingers the contempt proceedings would commence and Respondent would be drawn before the federal court.

The court computes the emotional damages period to be six months. It is not unreasonable to conclude that the distress, anger, and anguish over Respondent not delivering clear title, demanding more money, and violating the Plan and discharge injunction would be $400 a month. For a period of six months, that totals $2,500.00.

The court awards Movant-Debtor $2,500.00 in emotional distress damages.

Corrective, Coercive
Punitive Damages

Movant-Debtor requests not less than $100,000 in punitive damages. No discussion or rationale is given for these damages. From the evidence and argument presented, the $100,000+ in punitive damages is to punish Respondent for its conduct, not to have a coercive effect on Respondent's conduct.

The request for $100,000 plus in punitive damages is without merit. It well exceeds any reasonable and rational basis for the court's exercise of the contempt power.

Here, while the $100,000 plus in punitive damages is improper, the court believes that there is a prospective corrective, coercive punitive sanction that is proper. Respondent knew of the Bankruptcy Case, knew of the Plan, and ultimately knew they were paid – but wanted more. This was knowing, intentional conduct that clearly violates the Bankruptcy Code.

Compounding the situation for Respondent is that Movant-Debtor's counsel provided several clear letters laying out the federal law, the violation, and the request for voluntary compliance. That was met with silence and inaction by Respondent. Only after the Bankruptcy Case was reopened and Respondent feared facing the court was the clear title delivered (only two weeks after the case was reopened and before the Motion for Contempt was filed).

Bankruptcy and compliance with Federal Law is not a game.

The court determines that an additional $2,500.00 of corrective, coercive punitive damages are necessary and appropriate. The amount of the claim provided for in the Plan was $3,493.28. Amended Plan, § 2.09(d); Dckt. 141. The Emotional Distress damages total $2,500.00. The award of $2,500.00 of corrective, coercive punitive damages is modest ane necessary for the ongoing compliance with the Federal Bankruptcy Code. They are not burdensome and they are not punitive, but crafted to demonstrate that there is a cost to not complying, which cost can be easily avoided in the future.

Attorney's Fees as Damages

No evidence is presented as to there being any attorney's fees and expenses as part of Movant-Debtor's damages. Rather, to the extent that Movant-Debtor seeks to recover attorney's fees and costs, they will be as a prevailing party for this Motion.

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, 9020, and 9014.

The court shall enter its order finding Respondent violated the discharge injunction and has been held in contempt of court therefore. Damages consisting of $2,500.00 for Emotional Distress and $2,500.00 in coercive punitive damages, for a total of $5,000.00 are awarded Movant-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 Motion for Contempt in Violation of the Discharge by Brian Kenneth Sanchez, 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 the Motion is granted.
>
> **IT IS FURTHER ORDERED** that the court finds that MGI Motors violated the Discharge Injunction of 11 U.S.C. § 524(a)(2).
>
> **IT IS FURTHER ORDERED** that Movant is awarded $5,000.00 in damages against MGI Motors (which consist of $2,500.00 in Emotional Distress damages and 2,500.00 in Corrective, Coercive Punitive Damages).
>
> **IT IS FURTHER ORDERED** that Movant shall seek the award of attorney's fees and costs, if any, for this Motion for Contempt as provided in Federal Rule of Civil Procedure 54 and Federal Rule of Bankruptcy Procedure 7054, 9014(c). The allowed costs and attorneys' fees, if any, shall be enforced as part of the monetary award under this order MGI Motors.
>
> This Order constitutes a judgment (Federal Rule of Civil Procedure 54(a) and Federal Rules of Bankruptcy Procedure 7054, 9020, and 9014) and may

be enforced pursuant to the Federal Rules of Civil Procedure and the Federal Rules of Bankruptcy Procedure (including Federal Rule of Civil Procedure 69 and Federal Rules of Bankruptcy Procedure 7069 and 9014).

7.	**19-26957-E-13 MS-4**	**MARK HAYNES Mark Shmorgon**	**CONTINUED MOTION TO SELL 9-6-22 [105]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, and Office of the United States Trustee on September 6, 2022. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice).

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

No opposition was stated at the hearing.

The Motion to Sell is xxxxxxxxxxxxxxxxxx

The Bankruptcy Code permits Mark Haynes, Chapter 13 Debtor, ("Movant") to sell property of the estate or 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 2104 Keith Way Sacramento, California ("Property").

The proposed purchaser of the Property is Elk Grove Real Estate Holding Group, and the terms of the sale are:

A. Purchase Price: $110,000.00, cash.

B. Close of Escrow: 7 Days after acceptance.

C. Initial Deposit Amount: $3,000.00.

D. Commission to Galster Real Estate Group (Debtor's Brokerage Firm where Debtor is employed as a real estate agent): 3.00%.

E. Commission to Berkshire Hathaway Home Services (Buyer's Brokerage Firm): 2.50%.

Purchase Agreement and Counter Offer, Exhibits A and B, Dckt. 107.

TRUSTEE'S OPPOSITION

Trustee filed an opposition on September 12, 2022. Dckt. 110. Trustee opposes based on the following:

1. The Property's address is not clear as the Motion states it is 2104 Keith Way, when Schedule B states it is 2100 Keith Way. *Id.* ¶ 1.

2. Debtor did not discloses proceeds they will be receiving from the sale of the Property. No exemption was claimed in the Property and if the Property is 2100 Keith Way, no equity appeared at the time of filing. *Id.* ¶ 2.

3. The Motion gives a breakdown of expenses which do not total $109,999.38 that is stated in the Motion. Rather, the total expenses total $79,087.73. *Id.*

4. The Closing Statement shows property maintenance fees to Debtor for $19,041.75 which were not disclosed. *Id.*

5. Trustee received a subsequent closing statement showing fees to Park Place Properties. Trustee is unclear who this third party is. *Id.*

6. The Motion states County Taxes from 07/01/22 to 08/31/22 for $418.73. The Closing Statement estimates County taxes of $11,869.90. Trustee is unclear about this discrepancy. *Id.*

7. Trustee requests the commissions received by Debtor as a real estate agent be included as an additional plan payment. *Id.*

8. Ken Ching is listed under Class 3 claims for a secured claim against the lot of $80,000.00. Trustee believes Provident Trust Group, LLC is the financial services group and custodian for Mr. Ching as Provident lists two loans of $61,000.00 and $10,500.00. Trustee is not clear when Provident Trust Group, LLC became the mortgage holder for the notes. *Id.* ¶ 3.

9. No authorization to employ real estate agent has been filed. *Id.* ¶ 4.

DEBTOR'S RESPONSE

Debtor filed a response on September 13, 2022 (Dckt. 115) stating:

A. The correct address is 2104 Keith Ave. *Id.* ¶ 1. At the time of filing the petition, the address was 2100, however, it has recently been assigned 2104. *Id.* Debtor has amended Schedules A/B, C, and D, to list the correct address and parcel number. Amended Schedules, Dckt. 113.

B. Debtor is receiving $0.62 in net proceeds from the sale. Response, Dckt. 115 ¶ 2.

C. Park Place Properties has been managing the property since it was purchased by Debtor in 2005 (*Id.*) and is owed, according to Debtor's Exhibit C, $19,041.75 in reimbursements. Exhibit C, Dckt. 117.

D. The only other funds besides the net proceeds scheduled to go to Debtor are the seller's commission which he splits with his broker. Response, Dckt. 115 ¶ 3. Debtor wishes to have the commission turned to him as "he has indeed performed post petition work for which any other agent would be entitled to compensation." *Id.* However, Debtor then states they are "willing to give up his split of the commission." *Id.* ¶ 6.

E. Debtor states although they listed surrendering the Property, the holder of the Deed of Trust has not pursued with foreclosure. *Id.* ¶ 4. To facilitate the surrender of the Property, Debtor finds selling the Property to a third party avoids "unnecessary fees in relation to this vacant land." *Id.*

F. All the property taxes covered in this sale are going to towards the delinquency on this property only. *Id.* ¶ The $418.73 figure is a pro-rated number due for taxes during this tax period for this parcel. *Id.* The other taxes are for Debtor's primary residence. *Id.*

G. "As for the other possible liens for Ken Ching and Winsome Ching, the preliminary title report under Exceptions 14 and 15 shows a recorded deed of trust which is much more than the amount they are receiving. This sale is essentially a short sale." *Id.* ¶ 7.

H. Debtor subsequently filed a Motion to Employ Galster Real Estate Group.

DISCUSSION

The court finds numerous issues that raise significant questions with respect to the proposed sale. First, from review of the preliminary title report, submitted as Exhibit C, the following Deeds of trusts are secured by the Property (emphasis added):

> 14. **Deed of Trust to secure an indebtedness of $160,000.00**, dated October 31, 2005, recorded November 10, 2005, Book 20051110, Page 0572, Official Records.
>
> **Trustor**: **Mark E. Haynes**, a married man, as his sole and separate property
> Trustee: Alliance Title Company, a California Corporation
> **Beneficiary**: Western Sierra Bank, custodian FBO **Winsome A. Ching** IRA
> . . .
>
> The Beneficial Interest under said Deed of Trust was assigned of record to Polycomp Trust Company, Custodian FBO Winsome A. Ching IRA, by assignment, recorded July 6, 2010, Book 20100706, Page 0833, Official Records.
> . . .
>
> 15. **Deed of Trust to secure an indebtedness of $25,000.00**, dated October 31, 2005, recorded November 10, 2005, (book) 20051110, (page) 0576, Official Records.
>
> **Trustor**: **Mark E. Haynes**, a married man, as his sole and separate property
> Trustee: Alliance Title Company, a California Corporation
> **Beneficiary**: Western Sierra Bank, custodian FBO **Winsome A. Ching** IRA
> . . .
>
> Said matter affects other land.
>
> An agreement to modify the terms and provisions of said Deed of Trust recorded December 22, 2008, as Book 20081222, Page 0991, Official Records.
> . . .
>
> Affects Parcels 1 and 2 of Parcel Maps, Book 182, Page 2.
>
> The Beneficial Interest under said Deed of Trust was assigned of record to Polycomp Trust Company, Custodian FBO IRA, by assignment, recorded October 4, 2010, Book 20101 **Winsome A. Ching** 004, Page 0688, Official Records.

Preliminary Title Report, Exhibit D, Dckt. 117 at 17-18.

Upon review of the claims filed in this case, none of the above trustees or beneficiaries have filed proofs of claims. Additionally, under Schedule D, Debtor only lists one creditor as having a secured claim against the vacant lot, Provident Trust Group, LLC, c/o Winsome A. Ching IRA, in the amount of $80,000. Amended Schedule D, Dckt. 113. As no claims have been filed, and Debtor's Schedules are stated under penalty of perjury, there appears to be secured claims only in the amount of $80,000.00 against the vacant lot. It is not clear where the Report received information that, rather than $80,000.00, there are actually secured claims in the amount of $185,000.00.

Updated Seller's Estimated Statement

From review of Debtor's "Updated Seller's Estimated Statement" (Exhibit B, Dckt. 117), Debtor's sale will payoff two deeds of trusts to Provident Trust Group, the first in the amount of $61,000.00 with a $45.00 reconveyance fee and the second in the amount of $10,500.00 with a $45.00 reconveyance fee.

Again, it is not clear to the court what the total amount for these claims are, whether they are $185,000.00, $80,000.00, or $71,500.00. If $71,500.00, it appears Debtor's sale will payoff in full the two secured claims of Provident Trust Group.

It is also not clear to the court who Ken Ching is and whether he has a secured or unsecured claim. On the "Updated Seller's Estimated Statement" (Exhibit B, Dckt. 117), Ken Ching is to be paid $19,041.75 for the sale of the Property.

Reimbursement Due Ken

Upon review of Debtor's "Park Place Properties Fees Breakdown" (Exhibit C, Dckt. 117), there is a notation stating, "REIMBURSEMENT DUE TO KEN," in the amount of $19,041.75. From review of this exhibit, it appears to state a "Ken Ching" has paid $19,041.75 to property taxes and weed abatements for Debtor throughout the years of 2015-2021.

If this is so, Mr. Ching appears to be a creditor. However, Mr. Ching has filed no Proof of Claim. Additionally, Mr. Ching is not listed in Debtor's Amended Schedule D, Dckt. 113, or Debtor's Amended Schedule E/F, Dckt. 90. The deadline for filing proofs of claim in this case was January 16, 2020. Notice of Bankruptcy Filing and Deadlines, Dckt. 19. Even if a claim were filed, it would not be timely and would be disallowed in its entirety. *See* FED. R. BANKR. P. 3002(c).

Even if a claim were timely filed, there is no indication Mr. Ching's claim would have any lien on the Property or priority against unsecured creditors. Therefore, payment to Mr. Ching would be improper discriminatory against other nonpriority unsecured claims, in violation of 11 U.S.C. § 1322(b)(1). Payment to Mr. Ching in the amount of $19,041.75 through the sales proceeds appears grossly inappropriate.

Sales Proceeds, After Paying Debtor's Commission
State to be $0.00

Finally, the court finds it "curious" that Plan Estate or Bankruptcy Estate would receive only $0.62 in net proceeds. From first glance, this appears "too good to be true," and that all commissions and expenses equate to almost exactly the "value" of the property, $110,000.00, generating only $0.62 in net proceeds.

Upon further review of Debtor's Preliminary Title Report (Exhibit D, Dckt. 117 at 16 ¶ 2), as of August 8, 2022, the vacant lot appears to be assessed at a value of **$201,997.00.** On Debtor's Schedule A/B (Dckt. 113), however, Debtor states the vacant lot's value under penalty of perjury as $80,000.00. If the vacant lot's value is $80,000.00, it is not clear to the court why Debtor, as a sophisticated real estate agent, would be paying taxes based on an assessed valuation of $201,997.00 figure if the lot is actually only worth $80,000.00.

It could well appear that the sale has been structured to generate no proceeds (from this sale) for the Debtor (other than being paid a commission for selling property that has no value). It is unclear who this "Elk Grove Real Estate Holdings Group, Inc." is that has come in with a counter offer exactly enough to pay Debtor a commission and nothing else for the creditors.

Even if the value of the Property were $110,000.00, and all expenses, fees, and payoffs claimed by Debtor were allowed, the sale would only generate $0.62 in net proceeds. This would be of nominal benefit to the bankruptcy estate. The court, therefore, is unconvinced this sale is in good faith and the best interest of the estate.

The court at the September 27, 2022 hearing on this Motion and the related Motion to Employ Real Estate Broker addressed with the Chapter 13 Trustee, Debtor, and Debtor's counsel the additional information and documentation concerning the liens and comparable sales necessary for approval of a sale under these circumstances.

September 30, 2022 Declaration

On September 30, 2022, Winsome A. Ching, the Custodian of Winsome A. Ching, IRA, filed a Declaration indicating the IRA has received zero payments for either deed of trust. Dckt. 126. Under Mr. Ching's direction, the IRA has agreed to accept a payoff of $79,373.66 for the first deed of trust and $10,500.00 for the second deed of trust.

Supplemental Exhibits

On September 30, 2022, Movant filed three supplemental pleadings and an Amended Schedule D (Dckts. 135 - 128).

For Amended Schedule D, Dckt. 125, what has been amended has not been identified. Comparing it to the most recently Amended Schedule D (Dckt. 113, filed on September 13, 2022), it appears that the change has been to increase the Provident Trust Group, LLC secured claim to ($160,000) from ($80,000), and then add an additional ($25,000) secured claim for Provident Trust Group, LLC, also secured by the Keith Way Property.

The Declaration of Winsome Ching, the custodian of the Winsome A. Ching, IRA, has been provided. Dckt. 126. She testifies that under her direction a first deed of trust in the amount of $160,000 and a second deed of trust in the amount of $25,000 was recorded against the Keith Way Property for the IRA. Dec. ¶ 4; Dckt. 126.

Ms. Ching testifies that the IRA has not received payment on either of the secured debts. *Id*., ¶ 4.

Ms. Ching testifies that from the sale of the Keith Way Property, the IRA has agreed to accept a payoff of $79,373.66 for the obligation secured by the first deed of trust and a payoff of $10,500.00 for the obligation secured by the second deed of trust. This totals $89,873.66 for the secured debts owed the IRA.

A second Declaration has been filed, that of the Debtor. Dckt. 127. In it, his personal knowledge testimony is:

2. Exhibit A, is a true and correct copy of comparables I found within a 1 mile radius of the property that have sold in the last year.

3. Exhibit B is a true and correct copy of the First Mortgage Accepted Pay Off.

4. Exhibit C is a true and correct copy of the Second Mortgage Accepted Pay Off.

5. Exhibit D is a true and correct copy of an updated seller's estimated closing statement.

6. Exhibit E is a true and correct copy the original first deed of trust.

7. Exhibit F is a true and correct copy the original second deed of trust.

8. To this date I have made zero payments towards the deeds of trusts described above.

Going to the Exhibits authenticated by the Debtor, the court begins with Exhibit A, the comparable report. Dckt. 128. The "report" is a list of two prior sales from a different Zip Code than the Keith Way Property. No explanation is provided as to how the properties are comparable. One property shows a closing price of $75,000 and the second of $99,000.

Using Google Maps, the court identifies the 2400 Knoll St property as being located one block from Interstate 80, south of El Camino Ave and just north of the Hilton Sacramento Arden West on Harvard Street. From Google Maps, it appears that this corner lot is not in a residential neighborhood, but across the street from Hobart Service, Szeremi Sweeping Services, and Fraga Forklift Sales.

The second property is 2620 Crosby Way, which appears to be located in a residential neighborhood, two blocks from Interstate 80. It appears to back up to Plover Street School.

The Keith Way Property appears to be in a residential neighborhood off of Ethan Way and Cottage Way. The Keith Way Property appears to be about a mile away from Interstate 80.

While being recent sales, the Declaration and Report do not explain how these lots are comparable to the residential lot of the Keith way Property.

Exhibits B and C are copies of the written demands by Provident Trust Company, LLC, for the Winsome A. Ching IRA in the amounts of $79,373.66 and $10,500.00. *Id*.

Exhibit D is the updated Estimated Closing Statement for the $110,000 proposed sales price. Comparing to the prior Estimated Closing Statement (Exhibit B; Dckt. 117), the change is that the First Mortgage payoff amount to Provident Trust Group, LLC has been increased to $79,418.66 from $61,045.00; and the payment of $19,041.75 of "property maintenance fees to Park Place Properties" have been deleted.

Exhibits E and F are the two deeds of trust for the IRA. The Deed of Trust securing the $160,000 obligation is filed as Exhibit E. Dckt. 128. It is dated October 31, 2005, states the obligation

secured is $160,000, and the maturity date of the obligation is 2007. No extensions of the maturity date or notice of intent to preserve security interest is included as an exhibit.

The Deed of Trust securing the $25,000 obligation is filed as Exhibit F. *Id*. It states that the maturity date for the $25,000 obligation is 2010. No extensions of the maturity date or notice of intent to preserve security interest is included as an exhibit.

October 4, 2022 Hearing

Looking at the two Deeds of Trust and the testimony that nothing has been paid on the obligations secured by them, a question arises concerning the application of California Civil Code §§ 882.020 - § 882-030, and the duties of a Chapter 13 debtor having the rights, powers, and duties of a bankruptcy trustee.

At the hearing, XXXXXXXXXX

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 Mark Haynes, 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 the Motion to Sell is xxxxxxxxxxxxxxxx

8. **19-26957-E-13 MS-5** **MARK HAYNES** **Mark Shmorgon** **CONTINUED MOTION TO EMPLOY GALSTER REAL ESTATE GROUP AS BROKER(S)** **9-13-22 [119]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney], Chapter 13 Trustee, and Office of the United States Trustee on September 27, 2022. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion to Employ is xxxxxxxxxxxxxx

Mark Haynes ("Debtor") seeks to employ himself as a real estate agent of Galster Real Estate Group ("Broker") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Debtor seeks employment to sell property of the estate that is burdensome and of no value to the estate.

Debtor argues that his appointment and retention is necessary to advertise and sell his real property known as 2104 Keith Ave. Sacramento, CA 95825. Total commission sought on property is 5.5% with 3.0% to selling broker and 2.5% to buyer's broker.

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.

Here, it appears to the court that there are no economic benefits to the bankruptcy estate by employing Debtor for the sale of the real property. The sale will only generate $0.62 in net proceeds. As there is no net benefit to the estate, it is unclear why Debtor is attempting the sell the Property instead of surrendering it as stated in the Plan. Modified Plan, Dckt. 50.

The court at the September 27, 2022 hearing on this Motion and the related Motion to Sell Property addressed with the Chapter 13 Trustee, Debtor, and Debtor's counsel the additional information and documentation concerning the liens and comparable sales necessary for approval of a sale under these circumstances.

October 4, 2022 Hearing

At the hearing, XXXXXXXXXX

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 Mark Haynes ("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 xxxxxxxxxxx

FINAL RULINGS

9.	**22-20933-E-13** **BLG-2**	**MARY CARBONE** **Chad Johnson**	**MOTION FOR COMPENSATION FOR CHAD M JOHNSON, DEBTORS ATTORNEY(S)** **8-30-22 [39]**

Final Ruling: No appearance at the October 4, 2022 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 who filed claims, and Office of the United States Trustee on August 30, 2022. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Chad M. Johnson, the Attorney ("Applicant") for Mary Rose Carbone ("Client"), makes a First Interim Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period June 10, 2021, through August 24, 2022. Applicant requests fees in the amount of $5,423.00 and costs in the amount of $69.11. Applicant states that a $900.00 payment was received for fees and expenses to hold in trust until Debtor's case was filed. Upon filing, $413.00 and $45.00 were transferred from the trust to pay the court filing and credit report fee. The trust has a balance of $542.00.

TRUSTEE'S NONOPPOSITION

On September 12, 2022, Trustee filed a nonopposition indicating the serves were needed and fees are reasonable. Dckt. 45.

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: case preparation and petition-related filings; administrative tasks such as sending documents to the Trustee; attending the Meeting of Creditors; filing a motion to confirm, a motion to amend the Plan, and an appearance at two hearings related to confirmation. The court finds the services were beneficial to both Client and the Estate and were reasonable.

Task Billing

The court finds helpful, and in most cases essential, for professionals to provide a basic task billing analysis for the services provided and fees charged. This has long been required by the Office of the U.S. Trustee, and it is nothing new for professionals in this District. The task billing analysis requires only that the professional organize his or her task billing. The simpler the services provided, the easier it is for Applicant to quickly state the tasks. The more complicated and difficult to discern the tasks from the raw billing records, the more evident it is for Applicant to create the task billing analysis to provide the court, creditors, and U.S. Trustee with fair and proper disclosure of the services provided and fees being requested.

Included in the Motion is Applicant's raw time and billing records, which have not been organized into categories indicating the amount of time and amount billed for each category. Rather, Applicant provides a "Task Breakdown," however, does not include how many hours were spent in each category. See below:

TASK BREAKDOWN

	Labor Total	Cost Total	Total
CASE PREPARATION	$3,548.50	$0.00	$3,548.50
CASE ADMINISTRATION	$655.50	$32.50	$688.00
MOTION TO CONFIRM (BLG-1)	$926.50	$16.60	$943.10
FEE MOTION (BLG-2)	$292.50	$20.01	$312.51
Total	**$5,423.00**	**$69.11**	**$5,492.11**

EMPLOYEE BREAKDOWN 6/10/2021 - 8/24/2022

Employee	Position	Time	Rate	Amount
Chad Johnson	Attorney	11.80	$400.00	$4,720.00
Tina Perez	Paralegal	3.80	$185.00	$703.00

COST BREAKDOWN 6/10/2021 - 8/24/2022

Employee	Amount
Printing & Envelopes	$13.40
Postage	$23.71
Court Fee	$32.00

Exhibit B, Dckt. 42.

Rather than organizing the amount of time spent in each category, it is left for the court, U.S. Trustee, and other parties in interest to mine the records to construct a task billing. In the future, the court will decline the opportunity to provide this service to Applicant, instead leaving it to Applicant who intimately knows the work done and its billing system to correctly assemble the information.

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 1.80 hours in this category, in sum. Applicant reported 1.50 hours of his own time spent and .30 hours by his paralegal, Tina. Applicant describes these services as organizing and sending required documents to the Trustee, attending the Meeting of the Creditors, and reviewing incoming proof of claims.

Case Preparation: Applicant spent 10 hours in this category, in total. Applicant reported 7.90 hours, himself, and 2.10 hours performed by his paralegal, Tina. The services provided in this category include client-communication, mostly by email, but also via a couple phone calls, income analysis and several updates to such, mailing documents to client's spouse, review and scanning of client documents, preparing the initial draft of the Petition, and conducting "signoff" with client (including Applicant's preparation for "signoff").

Motion to Confirm and Fee Motion: Applicant spent 3.8 hours for this category of services. Applicant includes time related to filing two motions, a Motion to Confirm (BLG-1, Dckt. 17) and this Motion for Compensation of Debtor's Attorney (BLG-2, Dckt. 39).

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**
Tina Perez, Paralegal	3.8	$185.00	$703.00
Chad M. Johnson, Attorney	11.80	$400.00	$4,720.00
Total Fees for Period of Application			$5,423.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $69.11 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Cost**
Printing & Envelopes	$13.40
Postage	$23.71
Court Filing Fee	$32.00
Total Costs Requested in Application	$69.11

FEES AND COSTS & EXPENSES ALLOWED

Fees

Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First Interim Fees in the amount of $5,423.00 are approved pursuant to 11 U.S.C. § 331, and subject to final review pursuant to 11 U.S.C. § 330, and authorized to be paid by the Chapter 13 Trustee from the Estate, and from the available funds in Applicant's client trust, in a manner consistent with the order of distribution in a Chapter 13 case.

Costs & Expenses

First Interim Costs in the amount of $69.11 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Chapter 13 Trustee from the funds of the Estate and available funds in trust, held by Applicant, in a manner consistent with the order of distribution in a 13 case and under the confirmed Amended 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	$5,423.00
Costs and Expenses	$69.11

pursuant to this Application as interim fees pursuant to 11 U.S.C. § 331, subject to final review, pursuant to 11 U.S.C. § 330, and interim costs of $69.11 in this case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Chad M. Johnson ("Applicant"), Attorney for Mary Rose Carbone, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Chad M. Johnson is allowed the following fees and expenses as a professional of the Estate:
>
> Chad M. Johnson, Professional employed by Chapter 13 Debtor
>
> Fees in the amount of $5,423.00
> Expenses in the amount of $69.11,
>
> as an interim allowance of fees and expenses pursuant to 11 U.S.C. § 331 and subject to final review and allowance pursuant to 11 U.S.C. § 330.
>
> **IT IS FURTHER ORDERED** that Applicant is authorized to receive the remaining balance of $542.00 out of Trust and Chapter 13 Trustee is authorized to pay the remaining fees and costs allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

10. **19-25539-E-13 PGM-4** | **SAYED/SHEILA SHAH** **Peter Macaluso** | **MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTORS ATTORNEY(S)** **9-2-22 [68]**

Final Ruling: No appearance at the October 4, 2022 Hearing is required.

Local Rule 9014-1(f)(1) 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 September 2, 2022. By the court's calculation, 32 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).

Under the facts and circumstances of this Motion, the court shortens the time to the 32 days given.

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). The defaults of the non-responding parties and other parties in interest are entered**.**

The Motion for Allowance of Professional Fees is granted.

Peter G. Macaluso, the Attorney ("Applicant") for Sayed Naim Shah and Sheila Diann Shah, 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 February 14, 2022, through April 4, 2022. Applicant requests fees in the amount of $1,485.00.

TRUSTEE'S RESPONSE

Trustee filed a response on September 12, 2022. Dckt. 73. Trustee does not oppose additional compensation but requests the amount should be reduced from $1,485.00 to $1,305.00 because the billed work for $180.00 on March 22 2022, was not performed.

DEBTOR'S RESPONSE

Debtor filed a reply on September 27, 2022. Dckt. 75. Debtor's Counsel agrees that the amount should be reduced to $1,305.00 as Debtor's Counsel did not physically appear.

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 services for the Estate include a plan modification as a result of the COVID-19 pandemic and its unforeseeable, adverse effects. 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. 65, 67. 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)).

Time Records

This court finds helpful, and in most cases essential, for professionals to provide a basic task billing analysis for the services provided and fees charged. This has long been required by the Office of the U.S. Trustee, and it is nothing new for professionals in this District. The task billing analysis requires only that the professional organize his or her task billing. The simpler the services provided, the easier it is for Applicant to quickly state the tasks. The more complicated and difficult to discern the tasks from the raw billing records, the more evident it is for Applicant to create the task billing analysis to provide the court, creditors, and U.S. Trustee with fair and proper disclosure of the services provided and fees being requested.

Additionally, the court finds it necessary for attorneys to provide their time and billing records so the court can see what legal services are asserted to be recoverable.. Absent these records, the court has no ability to confirm whether the limited task billing provided is true, correct, reasonable, and awardable.

Given the modest amount of additional fees requested and the specific identifiable project, the court, this time, finds the evidence provided adequate.

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 Modify: Applicant spent 4.65 hours in this category. Applicant prepared and filed the motion, amended schedules and declaration, met with clients, litigated Trustee's opposition to Modified Plan, and prepared and sent an order to the court.

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**
Identify of Legal Assistant Not Provided	0.40	$75.00	$30.00
Peter G. Macaluso, Attorney	4.25	$300.00	$1,275.00
Total Fees for Period of Application			$1,305.00

FEES AND COSTS & EXPENSES ALLOWED

Fees

The unique facts surrounding the case, including the Motion to Modify the Plan, raise substantial and unanticipated work for the benefit of the Estate, Debtor, and parties in interest. The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. The request for additional fees in the amount of $1,305.00 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.

The court authorizes the Chapter 13 Trustee under the confirmed plan to pay 100% of the fees and 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 $1,305.00

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 Peter G. Macaluso ("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 Peter G. Macaluso is allowed the following fees and expenses as a professional of the Estate:

Peter G. Macaluso, Professional Employed by Sayed Naim Shah and Sheila Diann Shah, ("Debtor")

Fees in the amount of $1,305.00,

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

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

11. **20-23443-E-13 BLG-7** **TONI PAINTER Chad Johnson** **MOTION FOR COMPENSATION BY THE LAW OFFICE OF BANKRUPTCY LAW GROUP, PC FOR CHAD M JOHNSON, DEBTORS ATTORNEY(S) 8-30-22 [90]**

Final Ruling: No appearance at the October 4, 2022 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 30, 2022. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Chad M Johnson, the Attorney ("Applicant") for Toni Hendricks Painter, the Chapter 13 Debtor ("Client"), makes a Second and Interim Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period October 10, 2020, through August 24, 2022. Applicant requests fees in the amount of $5,540.50 and costs in the amount of $408.60.

Chapter 13 Trustee's Non-Opposition

David P Cusick, the Chapter 13 Trustee ("Trustee"), filed a non-opposition on September 12, 2022. Dckt. 96. Trustee does not oppose Applicant's motion and believes Applicant's services were needed and the fees are reasonable.

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 case administration, drafting motion to employ brokers, drafting motion to sell home, drafting motion to sell vehicle, drafting motion to confirm modified plan and drafting a fee motion. The court finds the services were beneficial to Client and the Estate and were reasonable.

Task Billing

The court finds helpful, and in most cases essential, for professionals to provide a basic task billing analysis for the services provided and fees charged. This has long been required by the Office of the U.S. Trustee, and it is nothing new for professionals in this District. The task billing analysis requires only that the professional organize his or her task billing. The simpler the services provided, the easier it is for Applicant to quickly state the tasks. The more complicated and difficult to discern the tasks from the raw billing records, the more evident it is for Applicant to create the task billing analysis to provide the court, creditors, and U.S. Trustee with fair and proper disclosure of the services provided and fees being requested.

Included in the Motion is Applicant's raw time and billing records, which have not been organized into categories indicating the amount of time and amount billed for each category. Rather, Applicant provides a "Task Breakdown," however, does not include how many hours were spent in each category. See below:

TASK BREAKDOWN

	Labor Total	Cost Total	Total
CASE ADMINISTRATION	$2,427.50	$0.00	$2,427.50
MOTION TO EMPLOY (BLG-2 & BLG-3)	$348.00	$76.70	$424.70
MOTION TO SELL HOME (BLG-4)	$603.50	$50.96	$654.46
MOTION TO SELL VEH (BLG-5)	$560.00	$198.20	$758.20
MOTION TO CONFIRM MODIFIED PLAN (BLG-6)	$1,090.50	$62.73	$1,153.23
FEE MOTION (BLG-7)	$511.00	$20.01	$531.01
Total	**$5,540.50**	**$408.60**	**$5,949.10**

EMPLOYEE BREAKDOWN 10/10/2020 - 8/24/22

Employee	Position	Time	Rate	Amount
Chad Johnson	Attorney	7.70	$400.00	$3,080.00
Tina Perez	Paralegal	13.30	$185.00	$2,460.50

COST BREAKDOWN 10/10/2020 - 8/24/22

Employee	Amount
Printing & Envelopes	$89.15
Postage	$131.45
Court Filing Fee	$188.00

Exhibit B, Dckt. 94.

While the court, U.S. Trustee, and other parties in interest could "do the math" and individually compute the hours that go with each block of "Labor Total," including that as part of the task billing breakdown is beneficial.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 10.10 hours in this category. Applicant reviewed notice of filed claims and sent correspondence emails with various parties.

Significant Motions and Other Contested Matters: Applicant spent 10.9 hours in this category. Applicant prepared a motion to employ, motion to sell home, motion to sell vehicle, motion to confirm modified plan and fee 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**
Chad Johnson - Attorney	7.70	$400.00	$3,080.00
Tina Perez - Paralegal	13.30	$185.00	$2,460.50
Total Fees for Period of Application			$5,540.50

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**
First Interim	$3,740.50
Total Interim Fees Approved Pursuant to 11 U.S.C. § 331	$3,740.50

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $408.60 pursuant to this application. Pursuant to prior interim applications, the court has allowed costs of $355.00.

The costs requested in this Application are,

Description of Cost	**Cost**
Printing & Envelopes	$89.15
Postage	$131.45
Court Filing Fee	$188.00
Total Costs Requested in Application	$408.60

FEES AND COSTS & EXPENSES ALLOWED

Fees

Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. Second Interim Fees in the amount of $5,540.50 are approved pursuant to 11 U.S.C. § 331, and subject to final review pursuant to 11 U.S.C. § 330 and prior Interim fees in the amount of $3,740.50 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 Interim Costs in the amount of $408.60 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 and prior Interim Costs in the amount of $355.55 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

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

Fees	$5,540.50
Costs and Expenses	$408.60

pursuant to this Application as interim fees pursuant to 11 U.S.C. § 331 and prior interim fees of $3,740.50 and interim costs of $355.00 as final fees pursuant to 11 U.S.C. § 330 as final fees and costs pursuant to 11 U.S.C. § 330 in this case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Chad M Johnson ("Applicant"), Attorney for Toni Hendricks Painter, Chapter 13 Debtor, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Chad M Johnson is allowed the following fees and expenses as a professional of the Estate:
>
> Chad M Johnson, Professional employed by Chapter 13 Debtor.
>
> Fees in the amount of $5,540.50
> Expenses in the amount of $408.60,
>
> as an interim allowance of fees and expenses pursuant to 11 U.S.C. § 331 and subject to final review and allowance pursuant to 11 U.S.C. § 330.

12. **22-21789-E-13 SKI-1** | **RONNIE/ANGELA BAKER** **Timothy Walsh** | **OBJECTION TO CONFIRMATION OF PLAN BY SANTANDER CONSUMER USA INC.** **8-23-22 [38]**

DEBTOR DISMISSED:
08/19/2022
JOINT DEBTOR DISMISSED:
08/19/2022

Final Ruling: No appearance at the October 4, 2022 hearing is required.

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

13. **22-21392-E-13 BLG-1** **STEPHANIE GRANT Chad Johnson** **MOTION FOR COMPENSATION BY THE LAW OFFICE OF BANKRUPTCY LAW GROUP, PC FOR CHAD M JOHNSON, DEBTORS ATTORNEY(S) 8-30-22 [17]**

Final Ruling: No appearance at the October 4, 2022 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 30, 2022. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Chad M Johnson, the Attorney ("Applicant") for Stephanie Irene Grant, the Chapter 13 Debtor ("Client"), makes a First Interim Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period February 2, 2022, through August 24, 2022. Applicant requests fees in the amount of $3,180.50 and costs in the amount of $25.97.

Trustee's Nonopposition

On September 6, 2022, Trustee filed a nonopposition indicating they believe the services were needed and fees were necessary. Dckt. 23.

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 case preparation, general case administration, and filing a fee motion. The court finds the services were beneficial to Client and the Estate and were reasonable.

Task Billing

The court finds helpful, and in most cases essential, for professionals to provide a basic task billing analysis for the services provided and fees charged. This has long been required by the Office of the U.S. Trustee, and it is nothing new for professionals in this District. The task billing analysis requires only that the professional organize his or her task billing. The simpler the services provided, the easier it is for Applicant to quickly state the tasks. The more complicated and difficult to discern the tasks from the raw billing records, the more evident it is for Applicant to create the task billing analysis to provide the court, creditors, and U.S. Trustee with fair and proper disclosure of the services provided and fees being requested.

Included in the Motion is Applicant's raw time and billing records, which have not been organized into categories indicating the amount of time and amount billed for each category. Rather, Applicant provides a "Task Breakdown," however, does not include how many hours were spent in each category. See below:

TASK BREAKDOWN

	Labor Total	Cost Total	Total
CASE PREPARATION	$2,306.50	$0.00	$2,306.50
CASE ADMINISTRATION	$640.00	$0.00	$640.00
FEE MOTION (BLG-1)	$234.00	$26.97	$260.97
Total	**$3,180.50**	**$26.97**	**$3,207.47**

EMPLOYEE BREAKDOWN 2/2/2022 - 8/24/22

Employee	Position	Time	Rate	Amount
Chad Johnson	Attorney	5.50	$400.00	$2,200.00
Tina Perez	Paralegal	5.30	$185.00	$980.50

COST BREAKDOWN 2/2/2022 - 8/24/22

Employee	Amount
Printing & Envelopes	$9.30
Postage	$17.67

Exhibit B, Dckt. 20.

While the court, U.S. Trustee, and other parties in interest could "do the math" and individually compute the hours that go with each block of "Labor Total," including that as part of the task billing breakdown is beneficial.

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.

Case Preparation: Applicant spent 8.40 hours in this category. Applicant evaluated the option of a bankruptcy filing, collected necessary documents for a bankruptcy case, and filed documents.

General Case Administration: Applicant spent 1.60 hours in this category. Applicant organized and sent required documents (11 U.S.C. § 521) to the trustee, attended meeting of creditors and reviewed proof of claims.

Significant Motions and Other Contested Matters: Applicant spent 0.80 hours in this category. Applicant was required to file an application for fees since they opted out of the fee guidelines.

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
Tina Perez- Paralegal	5.30	$185.00	$980.50
Chad Johnson- Attorney	5.50	$400.00	$2,200.00
Total Fees for Period of Application			$3,180.50

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $26.97 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Cost
Printing & Envelopes	$9.30
Postage	$17.67
Total Costs Requested in Application	$26.97

FEES AND COSTS & EXPENSES ALLOWED

Fees

Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First Interim Fees in the amount of $3,180.50 are approved pursuant to 11 U.S.C. § 331, and subject to final review pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Trustee in the amount of $2,665.47 from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan. Applicant is also authorized to pull $542.00 out of the trust.

Costs & Expenses

First and Interim Costs in the amount of $26.97 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

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

Fees	$3,180.50
Costs and Expenses	$26.97

pursuant to this Application as interim fees pursuant to 11 U.S.C. § 331 as final fees and costs pursuant to 11 U.S.C. § 330 in this case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Chad Johnson ("Applicant"), Attorney for Stephanie Irene Grant, Chapter 13 Debtor, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Chad Johnson is allowed the following fees and expenses as a professional of the Estate:
>
> Chad Johnson, Professional employed by Chapter 13 Debtor
>
> Fees in the amount of $3,180.50
> Expenses in the amount of $26.97,
>
> as an interim allowance of fees and expenses pursuant to 11 U.S.C. § 331 and subject to final review and allowance pursuant to 11 U.S.C. § 330.
>
> **IT IS FURTHER ORDERED** that Applicant is authorized to receive the remaining balance of $542.00 out of Trust and Chapter 13 Trustee is authorized to pay the remaining fees and costs allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

14. **22-21667-E-13 MEV-1** | **MICHAEL/TONI KELLEY** | **Marc Voisenat** | **MOTION TO CONFIRM PLAN** | **8-19-22 [20]**

Pursuant to the court's Order on September 23, 2022, Dckt. 32, this matter is continued to November 8, 2022, at 2:00 p.m. in Courtroom 33.