

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime  
Bankruptcy Judge  
Sacramento, California

October 14, 2015 at 10:00 a.m.

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1.	<a href="#">10-33601</a> -B-13	MICHAEL/KRISTEN	MOTION FOR COMPENSATION BY THE
	GW-4	KIRKPATRICK	LAW OFFICE OF LAW OFFICE OF
		Gerald L. White	GERALD L. WHITE FOR GERALD L.
			WHITE, DEBTORS ATTORNEY(S)
			9-8-15 [ <a href="#">85</a> ]

**Final Ruling:** No appearance at the October 14, 2015, hearing is required.

The Ex-Parte Motion for Final Approval of Debtors' Attorney Fees and/or Costs has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 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 court's decision is to grant the motion for compensation.

**FEES AND COSTS REQUESTED**

Gerald L. White ("Applicant"), the attorney Chapter 13 Debtors Michael Kirkpatrick and Kristen Kirkpatrick ("Clients"), makes a final request for the allowance of \$675.00, which is the balance of Applicant and Clients' retainer held in trust for attorney fees and costs.

Applicant provides a task billing analysis and supporting evidence of the services provided (Dkt. 88, p. Exh. B).

**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

October 14, 2015 at 10:00 a.m.

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). 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.

#### **BENEFIT TO THE ESTATE**

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' Committee 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 as the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According 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?

*Id.* at 959.

A review of the application shows that the services provided by Applicant relate to the estate enforcing rights and obtaining benefits. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

Applicant is allowed, from funds held in trust, the following amounts as compensation to this professional in this case:

Fees	\$675.00
Costs and Expenses	\$ 0.00

The court shall enter an appropriate civil minute order consistent with this ruling.

2. [15-26311](#)-B-13 DARRIN HUTCHINS  
JPJ-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
9-23-15 [[16](#)]

**Final Ruling:** No appearance at the October 14, 2015, hearing is required.

The Chapter 13 Trustee having filed a Notice of Withdrawal of the Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case, the objection and motion are dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

There being no objection to confirmation, the plan filed August 7, 2015, will be confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

3. [15-26411](#)-B-13 ROBERT/DEBRA SWEENEY  
PD-1 Gary Ray Fraley

OBJECTION TO CONFIRMATION OF  
PLAN BY BENEFICIAL FINANCIAL I  
INC  
9-24-15 [[22](#)]

**Tentative Ruling:** The Objection to Confirmation of the Chapter 13 Plan was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtors, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

The court's decision is to sustain the objection and deny confirmation of the plan.

First, the deed of trust held by Beneficial Financial I, Inc. ("Creditor") is not wholly unsecured and thus cannot be avoided under 11 U.S.C. § 506(d). Debtors' Schedule A indicates that there is approximately \$118,763.77 in total unsecured claims and that the fair market value of the property located at 7242 22nd Street, Rio Linda, California, is \$300,000.00. Thus, there is equity of approximately \$181,236.23. Creditor's claim, secured by a deed of trust on the subject property, is in the original principal sum of approximately \$36,694.26. Creditor's claim is not subject to avoidance under 11 U.S.C. § 506(d).

Second, Debtors' plan impermissibly proposes to modify Creditor's rights secured only by a security interest in the subject property that is Debtors' principal residence. Debtors' plan violates 11 U.S.C. § 1322(b)(2).

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 enter an appropriate civil minute order consistent with this ruling.

4. [15-24115](#)-B-13 TERRICINA MIMS MOTION TO CONFIRM PLAN  
TAG-2 Ted A. Greene 8-25-15 [[48](#)]  
**Thru #5**

**Final Ruling:** No appearance at the October 14, 2015, hearing is required.

The Motion to Confirm First Amended Chapter 13 Plan has been set for hearing on the 42-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to confirm the first amended plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor has provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on August 25, 2015, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

5. [15-24115](#)-B-13 TERRICINA MIMS AMENDED MOTION FOR COMPENSATION  
TAG-3 Ted A. Greene BY THE LAW OFFICE OF TED A.  
GREENE DEBTORS ATTORNEY(S)  
9-25-15 [[64](#)]

**Final Ruling:** No appearance at the October 14, 2015, hearing is required.

An Attorney Fee Application was filed on August 25, 2015, and an Amended Attorney Fee Application was filed on September 25, 2015. Motions for compensation must provide 21 days' notice pursuant to Rule 2002(a)(6). The amended motion provides only 19 days' notice.

The court's decision is to continue the matter to October 21, 2014, at 10:00 a.m.

The court shall enter an appropriate civil minute order consistent with this ruling.

6. [15-25816](#)-B-13 JOSE CHAPA AND ESTHER COUNTER MOTION TO DISMISS CASE  
SNM-1 SWENSEN-CHAPA 9-23-15 [[27](#)]  
**Thru #7** Stephen N. Murphy

WITHDRAWN BY M. P.

**Final Ruling:** No appearance at the October 14, 2015, hearing is required.

The Chapter 13 Trustee having filed a Notice of Withdrawal of the Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case, the objection and motion are dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

The court shall enter an appropriate civil minute order consistent with this ruling.

7. [15-25816](#)-B-13 JOSE CHAPA AND ESTHER MOTION TO CONFIRM PLAN  
SNM-1 SWENSEN-CHAPA 8-27-15 [[16](#)]  
Stephen N. Murphy

**Tentative Ruling:** The Motion to Confirm First Amended Chapter 13 Plan has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to not confirm the first amended plan.

First, EverBank is the holder of a claim secured only by a security interest in real property commonly known as 3039 Poplar Court, Fairfield, California, which is Debtors' principal place of residence. The total amount due and owing under the promissory note is \$331,845.77 and the pre-petition arrearage amount owed is \$1,877.29. The Debtors' plan does not propose to cure the pre-petition arrears and, therefore, does not comply with 11 U.S.C. § 1322(b)(5).

Second, the Debtors do not classify EverBank as a Class 1 claim. Class 1 includes all delinquent secured claims that mature after the completion of the plan. Since Debtors were delinquent to EverBank at the time of the filing of the petition, EverBank's claim should be classified as a Class 1 claim.

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

The court shall enter an appropriate civil minute order consistent with this ruling.

8. [15-25417](#)-B-13 GERALD FILICE  
JPJ-2 Pro Se

OBJECTION TO DEBTOR'S CLAIM OF  
EXEMPTIONS  
8-26-15 [[29](#)]

**Tentative Ruling:** The Objection to Exemptions has been set for hearing on at least 28-days the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to continue the matter to October 21, 2015, at 10:00 a.m, the Debtor having been subpoenaed to appear before the Superior Court of California, Sacramento County on October 14, 2015, to testify at a criminal trial.

The court shall enter an appropriate civil minute order consistent with this ruling.



**Final Ruling:** No appearance at the October 14, 2015, hearing is required.

The Motion for Order Valuing Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 court's decision is to value the secured claim of Bank of America, N.A. at \$0.00.

The motion to value filed by Debtor to value the secured claim of Bank of America, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 1292 Atrisco Circle, Sacramento, California ("Property"). Debtor seeks to value the Property at a fair market value of \$114,000.00 (and not \$115,000.00) as of the petition filing date. As the owner, Debtor's opinion of value is some evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The valuation of property which secures a claim is the first step, not the end, result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

(a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) (emphasis added). For the court to determine the creditor's secured claim (rights and interest in collateral), the creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2; case or controversy requirement for the parties seeking relief from a federal court.

#### **No Proof of Claim Filed**

The court has reviewed the Claims Registry for this bankruptcy case. No proof of claim has been filed by Creditor for the claim to be valued.

## **Discussion**

The first deed of trust secures a claim with a balance of approximately \$130,767.00. Creditor's second deed of trust secures a claim with a balance of approximately \$95,070.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall enter an appropriate civil minute order consistent with this ruling.

10. [15-26241](#)-B-13 REMINGTON PAUL  
Thru #11 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF  
PLAN BY U.S. BANK N.A.  
9-24-15 [[22](#)]

**Tentative Ruling:** The Objection to Confirmation of the Chapter 13 Plan was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

The court's decision is to sustain the objection and deny confirmation of the plan.

Debtor's plan does not provide for the full payment of U.S. Bank N.A.'s secured claim. Creditor is owed approximately \$214,953.45 in pre-petition arrears. The plan does not satisfy 11 U.S.C. § 1325(a)(5)(b).

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 enter an appropriate civil minute order consistent with this ruling.

11. [15-26241](#)-B-13 REMINGTON PAUL  
JPJ-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
9-23-15 [[19](#)]

**Tentative Ruling:** The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

The court's decision is to sustain the objection and conditionally deny the motion to dismiss.

The Debtor did not submit proof of his social security number to the Trustee at the meeting of creditors as required pursuant to Fed. R. Bankr. P. 4002(b)(1)(B). The Debtor has not cooperated with the Trustee pursuant to 11 U.S.C. § 521(a)(3).

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

Because the plan is not confirmable, the Debtor will be given a further opportunity to confirm a plan. But, if the Debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtor has not confirmed a plan within 75 days, the case will be dismissed on the Trustee's ex parte application.

The court shall enter an appropriate civil minute order consistent with this ruling.

12. [15-26244](#)-B-13 DOUGLAS GONZALES  
JPJ-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
9-23-15 [[18](#)]

**Tentative Ruling:** The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

The court's decision is to sustain the objection and conditionally deny the motion to dismiss.

First, feasibility depends on the granting of a motion to value collateral for BAC Home Loan Servicing. To date, the Debtor has not filed, set for hearing, and served on the respondent creditor and the Trustee a stand-alone motion to value the collateral. The Debtor has not complied with Local Bankr. R. 3015-1(j).

Second, the Debtor has not amended his voluntary petition to reflect a bankruptcy filed in 2011. The Debtor has not cooperated with the trustee pursuant to 11 U.S.C. § 521(a)(3).

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

Because the plan is not confirmable, the Debtor will be given a further opportunity to confirm a plan. But, if the Debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtor has not confirmed a plan within 75 days, the case will be dismissed on the Trustee's ex parte application.

The court shall enter an appropriate civil minute order consistent with this ruling.

13. [15-25547](#)-B-13 TIMOTHY/MONICA BARRY OBJECTION TO DEBTORS' CLAIM OF  
JPJ-2 Mark W. Briden EXEMPTIONS  
**Thru #15** 8-27-15 [[34](#)]

**Final Ruling:** No appearance at the October 14, 2015, hearing is required.

The Trustee's Objection to Debtor's Claim of Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

The court's decision is to overrule the objection as moot, the Debtors having amended Schedule C on September 23, 2015, to reflect that the Debtors may not claim the entire asset values in bank accounts with US Bank, as only 75% of the paid earnings that can be traced into deposit accounts are exempt pursuant to California Code of Civil Procedure § 704.070(b)(2).

The court shall enter an appropriate civil minute order consistent with this ruling.

14. [15-25547](#)-B-13 TIMOTHY/MONICA BARRY MOTION TO CONFIRM PLAN  
MWB-1 Mark W. Briden 8-27-15 [[26](#)]

**Final Ruling:** No appearance at the October 14, 2015, hearing is required.

The Debtors having filed a Notice of Withdrawal for the pending Motion to Confirm Amended Plan, the withdrawal being consistent with any opposition filed to the Motion, the court interpreting the Notice of Withdrawal to be an ex parte motion pursuant to Fed. R. Civ. P. 41(a)(2) and Fed. R. Bankr. P. 9014 and 7014 for the court to dismiss without prejudice the Motion, and good cause appearing, the Motion to Confirm Amended Plan is dismissed without prejudice.

The court shall enter an appropriate civil minute order consistent with this ruling.

15. [15-25547](#)-B-13 TIMOTHY/MONICA BARRY COUNTER MOTION TO DISMISS CASE  
MWB-1 Mark W. Briden 9-24-15 [[48](#)]

**Final Ruling:** No appearance at the October 14, 2015, hearing is required.

The Trustee's Opposition to Motion to Motion for Order Confirming First Amended Chapter 13 Plan and Counter Motion to Conditionally Dismiss Case will be denied as moot and overruled as moot, the Debtors having withdrawn their pending motion to confirm amended Plan.

The court shall enter an appropriate civil minute order consistent with this ruling.

16. [13-20048](#)-B-13 ALLEN HEROD AND MARCIE MOTION TO MODIFY PLAN  
SDB-3 GRADWOHL 9-3-15 [[44](#)]  
W. Scott de Bie

**Tentative Ruling:** The Motion Modify Chapter 13 Plan After Confirmation has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to permit the requested modification and confirm the modified plan, provided that the order confirming indicate that the correct amount paid into the plan through August 2015 is \$9,641.00.

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

The court shall enter an appropriate civil minute order consistent with this ruling.

17. [10-53453](#)-B-13 MICHAEL/PAMELA BAUERLE  
GW-4 Gerald L. White

MOTION FOR COMPENSATION BY THE  
LAW OFFICE OF LAW OFFICE OF  
GERALD L. WHITE FOR GERALD L.  
WHITE, DEBTORS ATTORNEY(S)  
9-17-15 [[80](#)]

**Tentative Ruling:** Because less than 28 days' notice of the hearing was given, the Ex-Parte Motion for Final Approval of Debtors' Attorney Fees and/or Costs is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the 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 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. If there is opposition, the court may reconsider this tentative ruling.

The court's decision is to grant the motion for compensation.

#### **FEES AND COSTS REQUESTED**

Gerald L. White ("Applicant"), the attorney Chapter 13 Debtors Michael Bauerle and Pamela Bauerle ("Clients"), makes a request for the allowance of \$613.75, which is held in trust for attorney fees and costs.

Applicant provides a task billing analysis and supporting evidence of the services provided (Dkt. 83, p. Exh. B).

#### **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). 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.

#### **BENEFIT TO THE ESTATE**

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' Committee 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 as the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According 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?

*Id.* at 959.

A review of the application shows that the services provided by Applicant relate to the estate enforcing rights and obtaining benefits. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

Applicant is allowed, from funds held in trust, the following amounts as compensation to this professional in this case:

Fees	\$613.75
Costs and Expenses	\$ 0.00

The court shall enter an appropriate civil minute order consistent with this ruling.



18. [15-22255](#)-B-13 MANPREET/GURPREET LAKHAT MOTION TO AVOID LIEN OF  
PGM-4 Peter G. Macaluso CITIBANK (SOUTH DAKOTA), N.A.  
9-10-15 [[57](#)]

**Thru #19 and Add On #34**

**Final Ruling:** No appearance at the October 14, 2015, hearing is required.

The Motion to Avoid Lien Pursuant to § 522(f)(1)(A) has been set for hearing on the 28 days' notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 court's decision is to sustain the motion to avoid judicial lien.

This is a request for an order avoiding the judicial lien of Citibank (South Dakota), N.A. ("Creditor") against the Debtors' property of commonly known as 2576 Emerald Drive, Yuba City, California ("Property").

A judgment was entered against Debtors in favor of Creditor in the amount of \$7,487.40. An abstract of judgment was recorded with Sutter County on June 25, 2010, which encumbers the Property. All other liens recorded against the Property total \$514,812.81.

Pursuant to the Debtors' Schedule A, the subject real property has an approximate value of \$294,031.00 as of the date of the petition.

Debtors have claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$1.00 on Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtors' exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

The court shall enter an appropriate civil minute order consistent with this ruling.

19. [15-22255](#)-B-13 MANPREET/GURPREET LAKHAT MOTION TO AVOID LIEN OF TARGET  
PGM-5 Peter G. Macaluso NATIONAL BANK  
9-10-15 [[63](#)]

**Final Ruling:** No appearance at the October 14, 2015, hearing is required.

The Motion to Avoid Lien Pursuant to § 522(f)(1)(A) has been set for hearing on the 28 days' notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 court's decision is to sustain the motion to avoid judicial lien.

This is a request for an order avoiding the judicial lien of Target National Bank ("Creditor") against the Debtors' property of commonly known as 2576 Emerald Drive, Yuba City, California ("Property").

A judgment was entered against Debtors in favor of Creditor in the amount of \$8,239.81. An abstract of judgment was recorded with Sutter County on June 8, 2010, which encumbers the Property. All other liens recorded against the Property total \$506,573.00.

Pursuant to the Debtors' Schedule A, the subject real property has an approximate value of \$294,031.00 as of the date of the petition.

Debtors have claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$1.00 on Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtors' exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

The court shall enter an appropriate civil minute order consistent with this ruling.

20. [14-32364](#)-B-13 MICHAEL/PAULA RHOADES  
PLC-5 Peter L. Cianchetta

OBJECTION TO CLAIM OF MIDLAND  
CREDIT MANAGEMENT, CLAIM NUMBER  
1  
8-25-15 [[116](#)]

**Final Ruling:** No appearance at the October 14, 2015, hearing is required.

The Objection to Claim Number 1 has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9 Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The court's decision is to sustain in part and deny in part the objection to Claim Number 1 of Midland Credit Management.

Michael Rhoades and Paula Rhoades ("Objectors"), request that the court disallow the claim of Midland Credit Management ("Creditor"), as agent for Asset Acceptance LLC, Claim Number 1. The claim is asserted to be unsecured in the amount of \$363.25. Objectors assert that the claim should be disallowed because the statute of limitations has run pursuant to California Code of Civil Procedure § 337(1).

According to the proof of claim, the underlying debt is a contract claim, most likely based on a written contract. California law provides a four-year statute of limitations to file actions for breach of written contracts. See Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach. According to the Objectors' exhibits (Dkt. 119), the last payment was received on or about November 12, 2008, which is more than four years prior to the filing of this case. Hence, when the case was filed on December 24, 2014, this debt was time barred under applicable nonbankruptcy law, i.e., Cal. Civ. Pro. Code § 337(1), and must be disallowed. See 11 U.S.C. § 502(b)(1).

Based on the evidence before the court, the Creditor's claim is disallowed in its entirety.

Creditor attempted to withdraw its Proof of Claim No. 1 on August 29, 2015, five days after this objection was filed. That withdrawal is ineffective. See Fed. R. Bankr. P. 3006.

Debtors' request for statutory damages and attorney's fees based upon an alleged violation of the California Debt Buyer's Act is denied without prejudice. See Fed. R. Bankr. P. 3007(b); 7001(1). See also *In re Taylor*, 2008 WL 4723364 at \*14-15 (Bankr. D. Mont. 2008).

The court shall enter an appropriate civil minute order consistent with this ruling.

**Tentative Ruling:** The Motion to Confirm Debtors' [sic] First Amended Plan Filed on September 2, 2015, has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to not confirm the first amended plan.

First, the plan will take approximately 70 months to complete, which exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4).

Second, the Debtor has not adequately amended the Statement of Financial Affairs such that the Debtor's plan can be properly assessed for feasibility pursuant to 11 U.S.C. § 1325(a)(4).

Third, neither the Debtor's schedules nor the plan include a provision for the treatment of the funds that the Debtor may receive during the life of the plan as a result of the continued tax overwithholdings.

Fourth, the Debtor's amended Schedule J filed July 31, 2015, lists an expense for childcare that is an increase of \$250.00 per month from the original amount listed in the Debtor's original Schedule J filed on July 9, 2015. The Debtor must provide an explanation for the increased expense so that feasibility of the plan can be properly assessed pursuant to 11 U.S.C. § 1325(a)(3).

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

The court shall enter an appropriate civil minute order consistent with this ruling.

22. [15-26377](#)-B-13 JAMES CHEUNG  
JPJ-1 Gary Ray Fraley

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
9-23-15 [[18](#)]

**Tentative Ruling:** The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

The court's decision is to sustain the objection and conditionally deny the motion to dismiss.

The Debtor did not appear at the duly noticed first meeting of creditors set for September 17, 2015, as required pursuant to 11 U.S.C. § 343. The plan cannot be confirmed prior to the thorough examination of the Debtor under oath.

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

Because the plan is not confirmable, the Debtor will be given a further opportunity to confirm a plan. But, if the Debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtor has not confirmed a plan within 75 days, the case will be dismissed on the Trustee's ex parte application.

The court shall enter an appropriate civil minute order consistent with this ruling.

23. [15-25581](#)-B-13 JOSE/VILMA SANTOS COUNTER MOTION TO DISMISS CASE  
PLL-1 Peter Lago 9-29-15 [[47](#)]  
**Thru #24**

**Tentative Ruling:** The Trustee's Opposition to Motion to Confirm Debtors [sic] Second Amended Chapter 13 Plan Filed on September 11, 2015, and Counter Motion to Conditionally Dismiss Case is denied as moot based on the disposition of Item #24.

The court shall enter an appropriate civil minute order consistent with this ruling.

24. [15-25581](#)-B-13 JOSE/VILMA SANTOS MOTION TO CONFIRM PLAN  
PLL-1 Peter Lago 9-11-15 [[35](#)]

**Tentative Ruling:** The Motion to Confirm Debtors [sic] Second Amended Chapter 13 Plan Filed on September 11, 2015, has not been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Only 33 days' notice was provided.

The court's decision is to deny without prejudice the motion to confirm due to defective service.

The court shall enter an appropriate civil minute order consistent with this ruling.

25. [12-41182](#)-B-13 MARIA ABELAYE  
CAH-3 Peter G. Macaluso

MOTION TO APPROVE LOAN  
MODIFICATION  
9-11-15 [[43](#)]

**Final Ruling:** No appearance at the October 14, 2015, hearing is required.

The Motion to Approve Loan Modification with Wells Fargo Home Mortgage has been set for hearing on the 28 days' notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 court's decision is to permit the loan modification requested.

Debtor seeks court approval to incur post-petition credit. Wells Fargo Home Mortgage ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce Debtor's mortgage payment from the current \$943.88 a month to \$883.28 a month. The rate of interest on the loan will be 3.250%. The principle amount owed on the loan will be \$98,536.31. The arrearage, if any, in the mortgage payments will be cured. The other terms and conditions of the loan will remain unchanged.

The motion is supported by the Declaration of Maria Cancicio Abelaye. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms since it reduces Debtor's mortgage payments.

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

The court shall enter an appropriate civil minute order consistent with this ruling.

26. [15-26285](#)-B-13 LESLIE BELT  
RTD-1 Mikalah R. Liviakis

OBJECTION TO CONFIRMATION OF  
PLAN BY SCHOOLS FINANCIAL  
CREDIT UNION  
9-24-15 [[30](#)]

**Tentative Ruling:** The Objections by Creditor Schools Financial Credit Union to Confirmation of Debtor's Chapter 13 Plan Filed on August 6, 2015, was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

The court's decision is to sustain the objection and deny confirmation of the plan.

The Debtor's plan does not appear to be proposed in good faith pursuant to 11 U.S.C. § 1325(a)(3). The Debtor does not disclose on his schedules various assets including, but not limited to, interests in real property, lease options, and farm animals. The Debtor's petition does not appear to provide complete and accurate information of his financial affairs.

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 enter an appropriate civil minute order consistent with this ruling.



**Tentative Ruling:** Because less than 28 days' notice of the hearing was given, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the 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 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. If there is opposition, the court may reconsider this tentative ruling.

The court's decision is to grant the motion and extend the automatic stay.

April Lind ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case was dismissed on September 20, 2015, after Debtor was delinquent on plan payments (Case No. 13-32816, Dkt. 27). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor 30 days after filing of the petition.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond 30 days if the filing of the subsequent petition was in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if the Debtor failed to perform under the terms of a confirmed plan. *Id.* at § 362(c)(3)(C)(i)(II)(cc). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); see also Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008).

The Debtor asserts that she has filed this new case in good faith and intends to prosecute it to the best of her abilities. The Declaration of April Louise Lind states that, since the dismissal of the previous bankruptcy case, the Debtor has found additional employment as a massage therapist at Spa Radiance that will provide her with additional net income of approximately \$1,625.00, presumably per month, to fund the plan.

The Debtor has sufficiently rebutted, by clear and convincing evidence, the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

The motion is granted and the automatic stay is extended for all purposes and parties, provided that the Debtor makes all required payments in the amount and at the time due for a period of six months. If the Debtor defaults in any such payment during the six-month period following entry of the order extending the automatic stay, the stay will terminate without further order of the court.

The court shall enter an appropriate civil minute order consistent with this ruling.

28. [13-36091](#)-B-13 JAMES/MOLLY ALEXANDER  
LBG-6 Lucas B. Garcia

MOTION FOR COMPENSATION BY THE  
LAW OFFICES OF STEPHEN J.  
JOHNSON FOR LUCAS GARCIA,  
DEBTORS' ATTORNEY(S)  
9-8-15 [[111](#)]

**Final Ruling:** No appearance at the October 14, 2015, hearing is required.

The Application for Approval of Debtors [sic] Attorney Fee and/or Costs in Chapter 13 Case has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 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 court's decision is to grant the motion for compensation.

#### **FEES AND COSTS REQUESTED**

Lucas Garcia ("Applicant"), the attorney to Chapter 13 Debtors James Alexander and Molly Alexander ("Client"), makes a request for the allowance of \$2,356.00 to be available from trust deposits to the office and the remaining amount of \$5,532.66 ordered as payable by the Chapter 13 Trustee. The Trustee has already paid \$1,460.00, leaving a balance to be paid by the Trustee of \$4,072.66. From the balance to be paid by the Trustee, the court will disallow 3.5 hours at \$65.00 per hour for legal staff (non-paralegal) time for a reduction of \$227.50. With this further reduction, the amount to be paid by the Trustee is \$3,845.16.

Applicant provides a task billing analysis and supporting evidence of the services provided (Dkt. 115).

#### **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,

**October 14, 2015 at 10:00 a.m.**

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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). 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.

#### **BENEFIT TO THE ESTATE**

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' Committee 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 as the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According 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?

*Id.* at 959.

A review of the application shows that the services provided by Applicant relate to the estate enforcing rights and obtaining benefits. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

Applicant is allowed the following amounts as compensation to this professional in this case:

To be made available from trust deposits	\$2,356.00
Payable by the Trustee	\$3,845.16

The court shall enter an appropriate civil minute order consistent with this ruling.

29. [14-21394](#)-B-13 PATRICK/SUZANNE CLARK  
PP-2 W. Scott de Bie  
**Thru #30**

MOTION TO CLARIFY PROCEDURES  
GOVERNING MOTION TO APPROVE  
VALUATION AND TRANSFER OF STOCK  
PURSUANT TO CONFIRMED PLAN,  
MOTION TO EXTEND TIME AND/OR  
MOTION FOR DETERMINATION THAT  
THE PENDING MOTION IS A  
NON-CORE PROCEEDING  
9-16-15 [[144](#)]

**Tentative Ruling:** The court issues no tentative ruling.

The Motion to Clarify Procedures Governing Motion to Approve Valuation and Transfer of Stock Pursuant to Confirmed Chapter 13 Plan; Alternatively Motion to Enlarge Time for Removal; Request for Determination that Proceeding is Non-Core has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The motion will be determined at the scheduled hearing.

30. [14-21394](#)-B-13 PATRICK/SUZANNE CLARK  
PP-3 W. Scott de Bie

MOTION TO EXTEND TIME TO APPEAL  
UNDER RULE 8002(C)  
9-23-15 [[148](#)]

**Tentative Ruling:** The court issues no tentative ruling.

**Tentative Ruling:** Because less than 28 days' notice of the hearing was given, the Motion to Extend Time for Appeal of Order Denying Motion to Approve Valuation and Transfer of Stock Pursuant to Confirmed Chapter 13 Plan is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtors, Creditors, the 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 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 will be determined at the scheduled hearing.

**Tentative Ruling:** Because less than 28 days' notice of the hearing was given, the Motion to Authorize the Debtor to Refinance Debt is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the 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 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. If there is opposition, the court may reconsider this tentative ruling.

The court's decision is to grant the motion to refinance debt.

Debtor seeks the consent of the court to refinance the debts of real property commonly known as 513 Blackwood Street, Sacramento, California. Debtor asserts that there are currently two loans on this property, both owed to or serviced by Bank of America. A single loan will refinance and pay off the two existing loans. Debtor asserts that a Glen Halverson has been paying the two loans and will continue to pay the new, single loan. Debtor has not made any payments on the debts during bankruptcy and the new debt will not be in his name or paid by him. The Estimated Settlement Statement is provided as Exhibit 1, Dkt. 54.

The motion is supported by the Declaration of Douglas Martin. The Declaration affirms Debtor's desire to refinance the debt, which will have no effect on Debtor's performance of the plan dated August 5, 2011, and confirmed on October 14, 2011.

The motion complying with the provisions of 11 U.S.C. § 364(d), the motion will be granted.

The court shall enter an appropriate civil minute order consistent with this ruling.

32. [15-26154](#)-B-13 MARGARET DAVIDSON CONTINUED OBJECTION TO  
JPJ-1 Michael O'Dowd Hays CONFIRMATION OF PLAN BY JAN P.  
**Thru #33** JOHNSON AND/OR MOTION TO  
DISMISS CASE  
9-16-15 [[22](#)]

**Tentative Ruling:** The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was continued from October 7, 2015. The objection and conditional motion were filed at least 14 days prior to the original hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor has filed a written reply to the objection.

The court's decision is sustain the objection for reasons stated in Item #33 and conditionally deny the motion to dismiss. The plan does not comply with 11 U.S.C. §§ 1322 and 1325(a).

The Chapter 13 Trustee shall also confirm whether it was provided with evidence of the Debtor's social security number at the continued meeting of creditors held on October 8, 2015.

Because the plan is not confirmable, the Debtor will be given a further opportunity to confirm a plan. But, if the Debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtor has not confirmed a plan within 75 days, the case will be dismissed on the Trustee's ex parte application.

The court shall enter an appropriate civil minute order consistent with this ruling.

33. [15-26154](#)-B-13 MARGARET DAVIDSON CONTINUED OBJECTION TO  
JM-1 Michael O'Dowd Hays CONFIRMATION OF PLAN BY  
SPRINGLEAF FINANCIAL SERVICES,  
INC.  
9-16-15 [[16](#)]

**Tentative Ruling:** The Objection to Confirmation of Chapter 13 Plan was continued from October 7, 2015. The objection was filed at least 14 days prior to the original hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). No written reply has been filed to the objection.

The court's decision is to sustain the objection and deny confirmation of the plan.

Feasibility of the plan filed August 1, 2015, depends on the granting of a motion to value collateral for Springleaf Financial Services, Inc. for a 2000 Ford Taurus. This motion was heard on October 7, 2015, and denied without prejudice.

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 enter an appropriate civil minute order consistent with this ruling.

34. [15-22255](#)-B-13 MANPREET/GURPREET LAKHAT CONTINUED MOTION TO CONFIRM  
PGM-2 Peter G. Macaluso PLAN  
8-26-15 [[44](#)]

**Tentative Ruling:** The Motion to Confirm Debtors' First Amended Plan Filed on August 26, 2015, was continued from October 7, 2015. The motion was originally set for hearing on at least 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to confirm the first amended plan.

First, feasibility depends on the granting of a motion to value collateral for Bank of America, N.A. This matter was heard on October 7, 2015, and granted.

Second, feasibility depends on the granting of motions to avoid liens held by Citibank and Target National Bank. These motions to avoid liens were heard on today's calendar at Items #18 and #19 and granted.

The amended plan complies with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.