

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

October 20, 2020 at 1:30 p.m.

ALL APPEARANCES MUST BE TELEPHONIC
(Please see the court's website for instructions)

1.	20-24313 -C-13	JOE GARCIA	MOTION TO VALUE COLLATERAL OF
	TLA -1	Thomas Amberg	GM FINANCIAL
			9-14-20 [10]

Final Ruling: No appearance at the October 20, 2020 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 36 days' notice was provided. Dkt. 13.

<p>The Motion to Value is granted.</p>

The debtor filed this Motion seeking to value the portion of Americredit Financial Services, Inc., dba GM Financial's ("Creditor") claim secured by the debtor's property commonly known as 2017 Chevrolet Silverado 1500 (the "Property").

While Creditor initially filed an opposition, the parties thereafter filed a Stipulation agreeing that the value of the Property, and Creditor's secured claim, is \$27,500. Dkt. 27.

The Motion is granted.

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

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

The Motion to Value Collateral and Secured Claim filed by the 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 pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Americredit Financial Services, Inc., dba GM Financial("Creditor") secured by property commonly known as a 2017 Chevrolet Silverado 1500 (the "Property") is determined to be a secured claim in the amount of \$27,500.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan.

Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 29 days' notice was provided. Dckt. 54.

The Motion for Approval of Compromise is denied without prejudice.

The debtor Kathleen Marslek filed this Motion pursuant to Federal Rule of Bankruptcy Procedure 9019 seeking approval of a settlement with Summit Law Firm aka Wyolaw Firm, Global Client Solutions, and Strategic Financial Solutions, and various other unknown parties.

The claims and disputes to be resolved relate to fraud-based torts and RICO claims. The litigation and settlement here involve 51 potential plaintiffs.

The debtor has not filed a copy of the settlement agreement because she desires to keep the agreement confidential. The debtor also has not described any terms to the court.

The Motion indicates the agreement is to be sent to the Chapter 13 trustee for approval.

APPLICABLE LAW

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Constr.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Comm. for Indep. S'holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;
2. Any difficulties expected in collection;
3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and
4. The paramount interest of the creditors and a proper deference to their reasonable views.

In re A & C Props., 784 F.2d 1377, 1381 (9th Cir. 1986); see also *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

DISCUSSION

Here, the debtor has opted to seek the approval of the trustee and not the court. The plain language of the Federal Rules of Bankruptcy Procedure state "the court may approve a compromise or settlement." Without knowing the terms of the agreement the court cannot provide approval.

If the debtor seeks to keep the agreement confidential, the proper avenue is to file the documents under seal.

The Motion is denied without prejudice.

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 Approve Compromise filed by debtor Kathleen Marslek 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 denied without prejudice.

3. [20-24317](#)-C-13 STACIE PRADIE
[GEL](#)-1 Gabriel Liberman

MOTION TO VALUE COLLATERAL OF
REAL TIME RESOLUTIONS, INC.
9-22-20 [[10](#)]

Final Ruling: No appearance at the October 20, 2020 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 28 days' notice was provided. Dckt. 13.

**The hearing on the Motion to Value is continued to
November 17, 2020 at 1:30 p.m.**

The debtor filed this Motion seeking to value the portion of Real Time Resolutions, Inc.'s ("Creditor") claim secured by the debtor's property commonly known as 1460 Shirley Drive, Sacramento, California (the "Property").

The debtor has presented evidence that the replacement value of the Property at the time of filing was \$483,755.33. Declaration, Dckt. 12.

The Creditor filed an Opposition on October 6, 2020, arguing there is equity to support its lien, and requesting a continuance to allow an appraisal. Dkt. 20. The parties filed a Stipulation on October 7, 2020, to continue the hearing to November 17, 2020. Dkt. 24.

DISCUSSION

The hearing on the Motion to Value is continued to November 17, 2020 at 1:30 p.m.

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 Value Collateral and Secured Claim filed by the 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 hearing on the Motion to Value is continued to November 17, 2020 at 1:30 p.m.

4. [20-23824](#)-C-13 RANDY/SAMANTHA SHUKER
[ADR](#)-1 Justin Kuney

CONTINUED MOTION TO VALUE
COLLATERAL OF CONSUMER
PORTFOLIO SERVICES, INC.
9-5-20 [[27](#)]

Thru #6

No Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 31 days' notice was provided. Dckt. 30.

The Motion to Value is ~~xxxxxx~~.

The debtor filed this Motion seeking to value the portion of creditor Consumer Portfolio Services, Inc.'s ("Creditor") claim secured by the debtor's property commonly known as a 2007 Chevy Silverado (the "Property").

The debtor has presented evidence that the replacement value of the Property at the time of filing was \$7,800. Declaration, Dckt. 29.

CREDITOR'S OPPOSITION

Creditor filed an Opposition on September 21, 2020. Dckt. 35. Creditor argues that the value of the Property is \$12,118.00, based on review of NADA guide valuations.

DISCUSSION

The court notes that while Creditor argues the NADA valuation is \$12,118.00, it is actually a Kelley Blue Book Quick Value that was filed as Exhibit 1. Dkt. 36. And, that exhibit was not authenticated and is therefore not admissible evidence.

However, Federal Rule of Bankruptcy Procedure 9014(d) provides that testimony of witnesses with respect to disputed material factual issues shall be taken in the same manner as testimony in an adversary proceeding. Because there is a disputed material fact, the Contested Matter must be set for evidentiary hearing.

During the prior hearing the parties requested a continuance to allow settlement talks.

At the hearing, ~~xxxxxxxxxxxxxxxx~~

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 Value Collateral and Secured Claim filed by the debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is **xxxxxxxxxx**

5. [20-23824](#)-C-13 RANDY/SAMANTHA SHUKER
[GB-1](#) Justin Kuney

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY
CONSUMER PORTFOLIO SERVICES,
INC.
8-25-20 [[19](#)]

No Tentative Ruling:

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 28 days' notice was provided. Dckt. 22.

The Objection to Confirmation of Plan is XXXXXX

Creditor Consumer Portfolio Services, Inc. ("Creditor") opposes confirmation of the Chapter 13 plan because it disputes the proposed valuation of its secured claim.

Because this Objection relies on the outcome of the debtor's Motion To Value (Dckt. 27), this hearing was continued.

At the hearing, XXXXXXXXXXXXXXXXXX

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

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

The Objection to the Chapter 13 Plan filed by Consumer Portfolio Services, Inc., 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 Plan is XXXXXXXXXX

Tentative Ruling:

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 22 days' notice was provided. Dkt. 41.

The Objection to Confirmation of Plan is sustained.
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The Chapter 13 Trustee, Russell Greer ("Trustee"), opposes confirmation of the Chapter 13 plan on the basis that:

1. Debtor Samantha Marie Shuker testified at her 341 Meeting of Creditors that she has obtained a new job and will earn approximately \$1,250.00 less than the amount of \$5,750.00 listed on Debtors' current Schedule I. No Amended or Supplemental Schedules were filed.
2. Debtors' plan provides for Consumer Portfolio Services, Inc. as a Class 2 claim and proposes to pay the value of the collateral securing that claim. Therefore the plan relies on the outcome of debtors' Motion To Value (Dkt. 27).
3. Although a copy of Debtors' 2019 tax returns were provided to the trustee, the returns provided were not signed and, Debtor Samantha Marie Shuker admitted at her 341 Meeting of Creditors that she does not remember filing her 2019 tax returns.

DISCUSSION

A review of the docket shows Schedule I has not been amended. Based on the debtors' testimony provided at the Meeting of Creditors, it appears that the current schedules are inaccurate and the proposed plan therefore not feasible. Dkt. 40.

The feasibility of the plan also relies on the outcome of debtors' Motion To Value (Dkt. 27) which is still pending.

The trustee also reports that while debtors' 2019 tax returns were provided, the provided copy was not signed. Among the Debtor's duties under the Bankruptcy Code is to cooperate with the Trustee as necessary to enable the Trustee to perform the Trustee's duties. 11 U.S.C. § 521(a)(3). If the 2019 tax returns were not actually filed, the debtors have failed to comply with 11 U.S.C. §1325(a)(9).

The plan presently does not appear to be feasible, and it is unclear whether debtors have filed their 2019 tax returns. Both grounds are reason to deny confirmation. 11 U.S.C. §1325(a)(6), (a)(9). Therefore, the Objection is sustained.

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

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

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

IT IS ORDERED that the Objection is sustained.

Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 36 days' notice was provided. Dckt. 48.

The Motion to Incur Debt is denied.

The debtors Jeffrey William Cook and Christina Lee Cook filed this Motion seeking authority to incur debt for the purchase of a 2017 Land Rover Discovery Sport.

The loan is for \$19,939.13, paid over 60 months at 21.59% interest. The monthly payment would be \$550.80.

The Motion notes that the plan is paying %100 of unsecured claims. The Motion notes the debtors have also reduced the following expenses to be able to afford the new payment:

- a. Home maintenance, repair, and upkeep expenses from \$200.00 to \$100.00.
- b. Food and housekeeping supply budget from \$1,150.00 to \$900.00.
- c. Childcare and children's education costs from \$550.00 to \$250.00.
- d. The Debtors have reduced their monthly clothing, laundry, and dry-cleaning expense from \$370.00 to \$150.00.
- e. Personal care products and services from \$250.00 to \$150.00.
- f. Transportation expense from \$850.00 to \$450.00.
- g. Entertainment budget from \$300.00 to \$100.00.

DISCUSSION

The proposed loan terms are plainly unreasonable. An interest charge of 21.59% is in the ballpark of an unsecured credit card debt, not a debt secured by a new vehicle.

The court is not reassured by the debtors' dramatic reduction of projected expenses. The debtors have not filed supplemental schedules to update the trustee and court as to debtors' financial information. The Motion is silent as to how debtors' income has changed since September 2017, and whether COVID-19 has impacted present income.

The court is not convinced the debtors will be able to afford the new debt while maintaining plan payments.

The Motion is denied.

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 Incur Debt filed by the debtors Jeffrey William Cook and Christina Lee Cook having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied.

8. [20-21243](#)-C-13 NORMA WARD AND BLANCHE MOTION TO MODIFY PLAN
[TLA](#)-2 CARBAJAL-WARD 9-10-20 [[35](#)]
Thomas Amberg

Final Ruling: No appearance at the October 20, 2020 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 40 days' notice was provided. Dckt. 40.

No opposition has been filed. Therefore, the court enters the defaults of the non-responding parties in interest, finds there are no disputed material factual issues, and determines the matter will be resolved without oral argument. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995); *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006).

The Motion to Confirm is granted.

The debtors filed this Motion seeking to modify the terms of the confirmed plan pursuant to 11 U.S.C. § 1329.

No opposition to the Motion has been filed.

Upon review of the record, the court finds the plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329. The Motion is granted, and the plan is confirmed.

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

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

The Motion to Confirm filed by the debtors, Norma Jean Ward and Blanche Joyce Carbajal-Ward, 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, the debtor's Modified Chapter 13 Plan filed on September 10, 2020 (Dckt. 39) meets the requirements of 11 U.S.C. §§ 1322, 1325(a), and 1329, and the plan is confirmed. Debtor's counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the trustee will submit the proposed order to the court.

9. [16-21744](#)-C-13 DANIEL/EUPHRASIA BLAIR MOTION FOR COMPENSATION FOR
[PGM](#)-3 Peter Macaluso PETER G. MACALUSO, DEBTORS
ATTORNEY(S)
10-5-20 [[100](#)]

Final Ruling: No appearance at the October 20, 2020 hearing is required.

The hearing on the Motion for Allowance of Professional Fees is continued to November 17, 2020 at 1:30 p.m.

Peter G. Macaluso, filed this Motion on October 5, 2020. Thereafter, a Notice of Continued Hearing was filed indicating the Motion should be continued to November 17, 2020 at 1:30p.m.

The reason for the continuance is likely to provide the minimum required notice, which is 21 days.

The court will continue the hearing.

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, 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 hearing on the Motion for Allowance of Professional Fees is continued to November 17, 2020 at 1:30 p.m.

Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 48 days' notice was provided. Dckt. 84.

The Motion to Confirm is XXXXX

The debtor filed this Motion seeking to confirm the Second Modified Chapter 13 Plan (Dckt. 83) filed on September 2, 2020.

The Chapter 13 trustee filed an opposition on September 24, 2020. Dkt. 86. The trustee argues he is unable to determine if the plan is feasible as the plan fails to specify when the interest rate of 18% on the Sacramento Tax Collector's claim commences.

The debtor filed a Reply requesting the following language be added to the language of the order confirming plan to address the trustee's opposition:

"The claim of the Sacramento Tax Collector shall be treated as a Class 2 claim with a secured amount of \$39,852.15 to be paid a monthly dividend of \$1,325.00 at 18% interest commencing September 2020."

At the hearing, **XXXXXXXXXXXXXXXXXX**

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 filed by the debtor, Minnie Louise Dawson, 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 **XXXXXXXXXXXX**

11. [17-27350](#)-C-13 RICCY/TESSIE LABITORIA
[PGM](#)-2 Peter Macaluso

CONTINUED MOTION FOR
COMPENSATION FOR PETER G.
MACALUSO, DEBTORS ATTORNEY(S)
9-16-20 [[151](#)]

Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(2) notice which requires 21 days' notice. More than 21 days notice has been provided.

The Motion for Allowance of Professional Fees is granted.

Peter G. Macaluso, the Attorney ("Applicant") for Riccy Labitoria and Tessie Novales Labitoria, the Chapter 13 debtors ("Client"), makes a Request for the Additional Allowance of Fees and Expenses in this case.

A plan was confirmed on July 17, 2018. Dkt. 81. Applicant substituted into this case as of March 26, 2020, for the purpose of preparing a modified plan. That plan was confirmed August 24, 2020. Dkt. 149.

Applicant seeks \$1,500 in additional fees for the services related to confirmation of the Modified Plan.

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 Brunswick 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)).

"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. Applicant prepared the order confirming the Plan.

Lodestar Analysis

If Applicant believes that there has been substantial and unanticipated legal services that have been provided, then such additional fees may be requested as provided in Local Bankruptcy Rule 2016-1(c)(3). The attorney may file a fee application, and the court will consider the fees to be awarded pursuant to 11 U.S.C. §§ 329, 330, and 331. For bankruptcy cases in the Ninth Circuit, "the primary method" to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves "multiplying the number of hours reasonably expended by a reasonable hourly rate." *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). "This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer's services." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). A compensation award based on the lodestar is a presumptively reasonable fee. *In re Manoa Fin. Co.*, 853 F.2d 687, 691 (9th Cir. 1988).

In rare or exceptional instances, if the court determines that the lodestar figure is unreasonably low or high, it may adjust the figure upward or downward based on certain factors. *Miller v. Los Angeles Cty. Bd. of Educ.*, 827 F.2d 617, 620 n.4 (9th Cir. 1987). Therefore, the court has considerable discretion in determining the reasonableness of a professional's fees. *Gates v. Duekmejian*, 987 F.2d 1392, 1398 (9th Cir. 1992). It is appropriate for the court to have this discretion "in view of the [court's] superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters." *Hensley*, 461 U.S. at 437. Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate. See *In re Placide*, 459 B.R. at 73 (citing

Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood), 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

FEES AND COSTS & EXPENSES ALLOWED

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 \$1,500 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by 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 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 Riccy Labitoria and Tessie Novales Labitoria ("Debtor")

Fees in the amount of \$1,500.00,

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

IT IS FURTHER ORDERED that 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.

Final Ruling: No appearance at the October 20, 2020 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 46 days' notice was provided. Dckt. 33.

No opposition has been filed. Therefore, the court enters the defaults of the non-responding parties in interest, finds there are no disputed material factual issues, and determines the matter will be resolved without oral argument. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995); *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006).

The Motion to Confirm is granted.

The debtor filed this Motion seeking to confirm the Chapter 13 Plan (Dckt. 32) filed on September 4, 2020.

No opposition to the Motion has been filed.

Upon review of the record, the court finds the plan complies with 11 U.S.C. §§ 1322 and 1325(a). The Motion is granted, and the plan is confirmed.

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

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

The Motion to Confirm filed by the debtor, Patricia Ann Sherron, 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, the debtor's Chapter 13 Plan filed on September 4, 2020 (Dckt. 32) meets the requirements of 11 U.S.C. §§ 1322 and 1325(a), and the plan is confirmed. Debtor's counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the trustee will submit the proposed order to the court.

Final Ruling: No appearance at the October 20, 2020 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 40 days' notice was provided. Dckt. 21.

No opposition has been filed. Therefore, the court enters the defaults of the non-responding parties in interest, finds there are no disputed material factual issues, and determines the matter will be resolved without oral argument. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995); *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006).

The Motion to Value is granted.

The debtor filed this Motion seeking to value the portion of Santander Consumer USA, Inc.'s ("Creditor") claim secured by the debtor's property commonly known as a 2016 Hyundai Elantra (the "Property").

The debtor has presented evidence that the replacement value of the Property at the time of filing was \$4,500.00. Declaration, Dckt. 19.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on May 23, 2017, which is more than 910 days prior to filing of the petition. 11 U.S.C. § 1325(a)(9) (hanging paragraph).

Upon review of the record, the court finds the value of the Property is \$4,500.00. Therefore, Creditor's secured claim is determined to be \$4,500.00. 11 U.S.C. § 506(a).

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 Value Collateral and Secured Claim filed by the 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 pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Santander Consumer USA, Inc. ("Creditor") secured by property commonly known as

2016 Hyundai Elantra (the "Property") is determined to be a secured claim in the amount of \$4,500.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan.

14. [20-23591](#)-C-13 SUZANNE ERICKSON
[RDG](#)-1 Peter Macaluso

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY RUSSELL
D. GREER
9-15-20 [[23](#)]

No Tentative Ruling:

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 21 days' notice was provided. Dckt. 26.

The Objection to Confirmation of Plan is XXXXXX

The Chapter 13 Trustee, Russell Greer ("Trustee"), opposes confirmation of the Chapter 13 plan on the basis that:

1. Debtor's plan provides for Santander Consumer USA as a Class 2 claim reduced to \$4,500.00 based on the value of its collateral. The Court has not entered an order on an appropriate motion to value that collateral.
2. Debtor testified at the 341 Meeting she is receiving \$457 every two weeks from unemployment, which income is not reported on Schedule I.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on September 29, 2020, noting the Motion To Value was filed and requesting a continuance. Dckt. 27.

DISCUSSION

A review of the docket shows the court has granted the debtor's Motion To Value.

However, it is unclear whether the debtor's income situation has changed. She has not filed Amended Schedule I to report \$917 a month in unemployment income.

At the hearing, xxxxxxxxxxxxxxxx

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

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

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, Russell Greer, 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
Plan is **xxxxxxxxxx**