UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

October 22, 2024 at 2:00 p.m.

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1. **20-21558-E-13** **MWB-5** | **DANIEL CRAIN** **Mark Briden** | **MOTION FOR COMPENSATION FOR MARK W. BRIDEN, DEBTORS ATTORNEY(S)** **9-4-24 [155]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on September 4, 2024. By the court's calculation, 48 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Mark Briden, the Attorney ("Applicant") for Daniel Zinn Crain, the Chapter 13 Debtor ("Client"), makes a Motion for Additional Fees and Costs in this case.

Fees are requested for the period July 25, 2024, through September 10, 2024. Applicant requests fees in the amount of $3,605 and costs in the amount of $45. Applicant states that some costs have been waived.

TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on October 2, 2024. Docket 167. Trustee opposes on the grounds:

1. Applicant is not clear which costs have been waived. *Id.* at 1:24-25.

2. Debtor asks for fees of $3,605 in the body of the Motion, then asks for fees of $3,650 in the prayer of the Motion. *Id.* at 1:26-28.

3. Applicant states he billed 10.3 hours related to the work subject to this Application, but Trustee has calculated Applicant has worked 10.8 hours. *Id.* at 2:3-4.

4. Trustee questions one time entry titled "Plus Fee's $27.50" for which Applicant billed an hour of time. *Id.* at 2:5-7.

5. Debtor has not filed a declaration stating if the billing statement has been reviewed and if the fees and costs being charged are acceptable. *Id.* at 2:12-14.

APPLICANT'S RESPONSE

Applicant filed a Response in the form of his Declaration on October 7. 2024. Docket 176. Applicant agrees the time billed is 10.3 hours, not 10.8 hours. Further, as to the time entry Trustee asks about, those services were for court time regarding the Notice to Sell which was pre approved on September 10, 2024. Finally, Applicant states he is waiving $26.50 in costs, as he accrued $71.50 in costs but is only requesting $45.

Applicant requests the total amount in fees and costs as $3,650.

Applicant submits the Declaration of Debtor in support of the Response. Docket 179. Debtor states he has reviewed the fee application and finds the fees and costs to be reasonable.

APPLICABLE LAW

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including–
>
> (A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

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

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

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Reasonable Billing Judgment

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

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

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

A review of the application shows that Applicant's for the Estate include preparing and having this court grant a Motion to Sell that allowed the Debtor to complete his Chapter 13 Plan in full. The court finds the services were beneficial to Client and the Estate and were reasonable.

"No-Look" Fees

In this District, the Local Rules provide consumer counsel in Chapter 13 cases with an election for the allowance of fees in connection with the services required in obtaining confirmation of a plan and the services related thereto through the debtor obtaining a discharge. Under the Local Rules prior to the August 2023 revisions, which are in effect in this case, 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 $6,000 in attorneys' fees, with $4,000 paid prepetition and the remainder paid through the Plan. Dckt. 71. Applicant prepared the order confirming the Plan.

Lodestar Analysis

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

In rare or exceptional instances, if the court determines that the lodestar figure is unreasonably low or high, it may adjust the figure upward or downward based on certain factors. *Miller v. Los Angeles Cty. Bd. of Educ.*, 827 F.2d 617, 620 n.4 (9th Cir. 1987). Therefore, the court has considerable discretion in determining the reasonableness of a professional's fees. *Gates v. Duekmejian*, 987 F.2d 1392, 1398 (9th Cir. 1992). It is appropriate for the court to have this discretion "in view of the [court's] superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially

are factual matters." *Hensley*, 461 U.S. at 437. Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate. *See In re Placide*, 459 B.R. at 73 (citing *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

FEES AND COSTS & EXPENSES REQUESTED

Fees

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Mark Briden, Attorney	10.3	$350.00	$3,605.00
Total Fees for Period of Application			$3,605.00

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $45 pursuant to this application. It is not clear from the exhibits submitted what these costs are. Costs are not clearly listed in the Exhibits submitted in support of the Motion. *See* Docket 158.

At the hearing, **xxxxxxx**

FEES AND COSTS & EXPENSES ALLOWED

Fees

The unique facts surrounding the case, including selling Debtor's residence, raise substantial and unanticipated work for the benefit of the Estate, Debtor, and parties in interest. The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. The request for additional fees in the amount of $3,605 is approved pursuant to 11 U.S.C. § 330 and authorized to be paid by David Cusick ("the Chapter 13 Trustee") from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 case.

Costs & Expenses

~~Costs in the amount of $45 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 Estate in a manner consistent with the order of distribution in a Chapter 13 case.~~

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

Fees	$3,605
~~Costs and Expenses~~	~~$45~~

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Mark Briden, the Attorney ("Applicant") for Daniel Zinn Crain, the Chapter 13 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 Mark Briden is allowed the following fees and expenses as a professional of the Estate:
>
> Mark Briden, Professional Employed by Daniel Zinn Crain ("Debtor")
>
> Fees in the amount of $3,605
> ~~Expenses in the amount of $45,~~
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for Debtor.
>
> **IT IS FURTHER ORDERED** that David Cusick ("the Chapter 13 Trustee") is authorized to pay the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 case.

2. 23-21904-E-13 SLG-3 | SCOTT JOHNSTON, Joshua Sternberg | MOTION TO MODIFY PLAN, 9-23-24 [73]

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

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

Sufficient Notice not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 23, 2024. By the court's calculation, 29 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition). Movant is six days late of the required notice.

At the hearing, **XXXXXXX**

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

The Motion to Confirm the Modified Plan is denied.

The debtor, Scott Allen Johnston ("Debtor") seeks confirmation of the Modified Plan to account for the mortgage claim that was filed after the initial Plan. Declaration ¶ 4, Docket 75. The Modified Plan provides for payments of $1,139.00 per month for 1 month, $1,611.00 per month for 13 months, and $1,128.00 per month for 46 months with a 100% dividend to unsecured creditors. Modified Plan, Docket 77. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on October 8, 2024. Docket 79. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor is not proposing payments sufficient to adequately fund the Plan. Opp'n 1:25-2:6, Docket 79.

B. The Plan is overextended due to the amount of payment proposed. *Id.* at 2:7-21.

C. Debtor may be slightly paid ahead under these terms. *Id.* at 2:22-26.

D. The Plan does not provide a dividend for administrative expenses. *Id.* at 2:27-3:5.

E. The Motion does not cite any legal authority, and Debtor incorrectly marked Schedules as Amended and not Supplemental. *Id.* at 3:6-16.

DISCUSSION
Insufficient Plan Payments

Debtor's proposed payment of $1,128.00 is not enough to pay the monthly dividends to the ongoing mortgage payment and the scheduled pre-petition arrears listed in the plan as $546.18 and $1,070.67 in violation of 11 U.S.C. § 1325(a)(6). Debtor's Plan is overextended resulting from this proposed payment being insufficient to pay all claims. 11 U.S.C. § 1322(d)(1)(C) states, "the plan may not provide for payments over a period that is longer than 5 years." Failure to comply with the statutory length provided for a Plan is cause to sustain the objection.

In explaining why the Plan does not provide for administrative expenses, at the hearing, **xxxxxxx**

Review of Minimum Pleading Requirements for a Motion

The Supreme Court requires that the motion itself state with particularity the grounds upon which the relief is requested. FED. R. BANKR. P. 9013. The Rule does not allow the motion to merely be a direction to the court to "read every document in the file and glean from that what the grounds should be for the motion." That "state with particularity" requirement is not unique to the Bankruptcy Rules and is also found in Federal Rule of Civil Procedure 7(b).

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, applied the general pleading requirements enunciated by the United States Supreme Court to the pleading with particularity requirement of Bankruptcy Rule 9013. *See In re Weatherford*, 434 B.R. 644, 646 (N.D. Ala. 2010) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007)). The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal* to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court. *See* 556 U.S. 662 (2009).

Federal Rule of Bankruptcy Procedure 9013 incorporates the "state with particularity" requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules of Civil Procedure and of Bankruptcy Procedure, the Supreme Court endorsed a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the "short and plain statement" standard for a complaint.

In this case, Debtor cited to no sections of the Code whatsoever in support of the Motion, in violation of Rule 9013, failing to state with particularity grounds to confirm the Modified Plan. It is true that Debtor mentions some of the elements of 11 U.S.C. § 1325(a) in the Motion, such as stating the Modified Plan has been proposed in good faith. However, the lack of citation to specific sections in support of confirmation falls short of Rule 9013 pleading.

At the hearing, **xxxxxxx**

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

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

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

3. 24-22426-E-13 TAA-1 | **JAMALL ROBINSON** / **Kevin Tang** | **MOTION TO VALUE COLLATERAL OF DCELK IRREVOCABLE TRUST AND/OR MOTION TO AVOID LIEN OF DCELK IRREVOCABLE TRUST**
10-3-24 [55]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 3, 2024. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of DCELK Irrevocable Trust c/o FCI Lender Service Inc. ("Creditor") is xxxxxxx.

The Motion to Value filed by Jamall Joseph Robinson ("Debtor") to value the secured claim of DCELK Irrevocable Trust c/o FCI Lender Service Inc. ("Creditor") is accompanied by Debtor's declaration. Declaration, Docket 57. Debtor is the owner of the subject real property commonly known as 467 Baywood Dr., Vallejo, CA 94591 ("Property"). Debtor seeks to value the Property at a fair market value of $380,000 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

CREDITOR'S OPPOSITION

On October 16, 2024, Creditor filed an Opposition. Docket 69. Creditor states:

1. Debtor offers no explanation or admissible evidence to support the proposed market value of $380,000. Moreover, Debtor scheduled the Property as having a market value of $440,000 in the related Chapter 7 case. *Id.* at 2:9-15.

2. Debtor's testimony is not sufficient evidence for the court to find the valuation is proper. *Id.* at 3:10-14.

3. Movant requests time to obtain a verified appraisal of the Property. *Id.* at 3:15-6:3.

DISCUSSION

The valuation of property that 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 that creditor's secured claim (rights and interest in collateral), that 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).

In this case, the senior in priority deed of trust secures a claim with a balance of approximately $535,981. Schedule D at 23, Docket 1. Creditor's junior in priority deed of trust secures a claim with a balance of approximately $213,927.72. *Id*. Therefore, Creditor's claim secured by a junior deed of trust would be completely under-collateralized, if the court accepts Debtor's valuation.

However, Creditor has requested time to obtain an appraisal of the Property, suggesting a 60-day continuance, so it may present evidence to support a potentially greater valuation.

At the hearing, **xxxxxxx**

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

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

The Motion to Value Collateral and Secured Claim filed by Jamall Joseph Robinson ("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 **xxxxxxx**

4. 24-22633-E-13 SMJ-1 | **ERIC JENKINS** / **Scott Johnson** | **CONTINUED MOTION TO CONFIRM PLAN** **7-30-24 [15]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, attorneys of record who have appeared in the case, parties requesting special notice, and Office of the United States Trustee on July 30, 2024. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is xxxxxxx.

October 22, 2024 Hearing

The court continued the hearing from this Motion from the hearing held on September 10, 2024. Docket 27. A review of the docket on October 15, 2024 shows nothing new has been filed with the court.

At the hearing, **xxxxxxx**

REVIEW OF MOTION

The debtor, Eric Antonio Jenkins ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly payments of $975.00 for 48 months, then monthly payments of $1,145.00 for 12 months with unsecured creditors receiving a 6% dividend. Am. Plan, Docket 18. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on August 27, 2024. Docket 20. Trustee opposes confirmation of the Plan on the basis that:

1. Debtor's Schedules and other filings documents contain missing or inaccurate information. Debtor testified at the meeting of creditors and he and/or his non-filing spouse ("NF-Spouse") own a Venmo account that is not listed on Schedule A/B. Debtor also provided the Trustee with a copy of his California Driver's License that lists a prior address that he has lived at and/or used in the last three years. The Debtor testified at the Meeting of Creditors that he has used this address in the last three years and agreed that it should be listed on the Statement of Financial Affairs. Obj. 2:7-17, Docket 20.

2. Debtor's Plan is discriminating unfairly against creditors in the same class. Specifically, Trustee argues:

    a. The Debtor is proposing to treat her general unsecured creditors and her NF-Spouse's community debt unsecured creditors differently. While the court allows different treatment of creditors within the same class according to 11 U.S.C. §1322(b)(1), that treatment cannot "discriminate unfairly." *Id.* at 2:18-22.

    b. Unfair discrimination is "wildly debated" amongst the Circuits, so Trustee is requesting this court weigh in on the issue. *Id.*

    c. The main test that has been adopted stems from 9th and 8th Circuits (*In re Wolff*, 22 B.R. 510 (B.A.P. 9th Cir. 1982) and *In re Leser*, 939 F.2d 669 (8th Cir. 1991)). *Id.* at p. 2:17-18. *Wolff* outlines the four factors a court should consider:

        i. whether the discrimination has a reasonable basis;

        ii. whether the debtor can carry out a plan without the discrimination;

        iii. whether the discrimination is proposed in good faith; and

        iv. whether the degree of discrimination is directly related to the basis or rationale for the discrimination. Restating

the last element, does the basis for the discrimination demand that this degree of differential treatment be imposed?

d. Trustee argues there would be unfair discrimination if Debtor's general unsecured claims were paid a 6% dividend (totaling $5,134.11 over the life of the Plan) while NF-Spouse's debts are paid at a 100% (totaling $94,680 over the life of the Plan). Opp'n 3:5-8, Docket 20.

e. In applying the *Wolff* factors, Trustee argues:

i. Whether the discrimination has a reasonable basis: The Debtor has not offered a reason for the discrimination other than their testimony at the meeting of creditors stating that the NFS did not file the bankruptcy case with them since they do not believe in bankruptcy. California is a community property state so the concept of "mine" vs "yours" shouldn't be a factor for assets and debts that were incurred during the marriage, which it appears at least some of these have been. There does not appear to be a rational basis to discriminate other than to pay one person's debts over the other which seems to lean more toward the "unfair" side of the argument. Opp'n 3:17-24, Docket 20.

ii. Whether the Debtor can carry out a plan without the discrimination. The Trustee believes that the plan could still be successful without the discrimination by increasing the plan payments. Opp'n 3:25-27, Docket 20.

iii. Whether the discrimination is proposed in good faith. The Trustee believes that this treatment is not being proposed in good faith. The Trustee has requested information regarding the NFS' debts and to date, still has not received it. *Id.* at 4:1-3.

iv. Whether the degree of discrimination is directly related to the basis or rationale for the discrimination. Restating the last element, does the basis for the discrimination demand that this degree of differential treatment be imposed? There does not appear to be anything in the evidence filed that would "demand" this degree of discrimination between the spouses. It simply appears that the NF-Spouse wants to do what he wants to do without being bound by the Bankruptcy rules. *Id.* at 4:4-9.

3. In conclusion, Trustee argues a dividend of 6% to Debtor's general unsecured creditors would amount to unfair discrimination, and the Plan should not be confirmed.

APPLICABLE LAW

The section of the Code implicated here, 11 U.S.C. § 1322(b)(1), states:

(b) Subject to subsections (a) and (c) of this section, the plan may—

> (1) designate a class or classes of unsecured claims, as provided in section 1122 of this title, but may not discriminate unfairly against any class so designated; however, such plan may treat claims for a consumer debt of the debtor if an individual is liable on such consumer debt with the debtor differently than other unsecured claims. . .

By this language, 11 U.S.C. § 1322(b)(1) allows for treatment of unsecured claims differently, so long as the debt is consumer debt of the debtor, and an individual is also liable on such consumer debt with the debtor. No reference is made to "community debt" in the Federal Statute, but specifically that there must be personal liability of the debtor and the non-debtor.

11 U.S.C. § 1322(b)(1) did not originally contain the language allowing a debtor to treat claims for which a debtor and another person are both personally liable different from other claims in the class and not be subject to an unfair discrimination test. Prior to the enactment of the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub.L. No. 98-353, 98 Stat. 333 (1984) ("BAFJA"), 11 U.S.C. § 1322(b)(1) ended with the words "so designated."

This subsequently added text, referred to as the "however clause," "has been the subject of a significant amount of debate. Neither courts nor commentators have agreed precisely on what Congress intended to accomplish by adding the 'however clause.'" *Meyer v. Renteria* (*In re Renteria*), 470 B.R. 838, 841 (B.A.P. 9th Cir. 2012). As the Bankruptcy Appellate Panel for the Ninth Circuit (B.A.P.) has explained,

> The focus is on the emphasized "however" clause. That clause - which was added to § 1322(b)(1) in 1984 - has perplexed and divided courts as to whether it obviates, or merely qualifies, the fairness requirement.
>
> Most courts hold that separately classified co-obligor debts must still clear the § 1322(b)(1) unfair discrimination hurdle. The consequence is that the "however" clause permitting co-obligor debts to be treated "differently" is more in the nature of a qualification to the application of the unfair discrimination analysis than an exemption from it. *See, e.g., Ramirez v. Bracher* (*In re Ramirez*), 204 F.3d 595, 596 (5th Cir. 2000); *Chacon v. Bracher* (*In re Chacon*), 202 F.3d 725, 726 (5th Cir. 1999); *Spokane Ry. Credit Union v. Gonzales* (*In re Gonzales*), 172 B.R. 320, 328-30 (E.D. Wash. 1994); *In re Cheak*, 171 B.R. 55, 58 (Bankr. S.D. Ill. 1994); KEITH M. LUNDIN, CHAPTER 13 BANKRUPTCY: 3D § 150.1 n.3 (2000) (gathering cases).

> A minority of courts, including the bankruptcy court in this appeal, conclude that the "however" clause excuses compliance with the § 1322(b)(1) ban on unfair discrimination. *In re Dornon*, 103 B.R. 61, 64-65 (Bankr. N.D.N.Y. 1989); LUNDIN, § 150.1 n.2 (gathering cases).
>
> A few courts think the debate of little consequence because overreaching in favor of co-obligors can be dealt with under the good faith requirement of 11 U.S.C. § 1325(a)(3). *Dornon*, at 64; *In re Hill*, 261 B.R. 495, 497-98 (Bankr. N.D. Fla. 2001).

In re Hill, 268 B.R. 548, 551-52 (B.A.P. 9th Cir. 2001). The court in *Hill* declined to answer the question surrounding the "however clause," but the B.A.P. picked back up and substantively answered the question in *Meyer*.

The Bankruptcy Appellate Panel goes through a statutory construction analysis regarding the "however clause." *Meyer* 470 B.R. at 842-44. It takes into account different statutory constructions of 11 U.S.C. § 1322(b)(1), including the plain meaning rule and the rule of the last antecedent, discussing how courts across the nation have wrestled with the "however clause." *Id.* Ultimately, the Bankruptcy Appellate Panel found that " [a]t least one thing is clear to us from the above-referenced differing interpretations and battling canons of construction: courts have been unable to derive from the text of the statute a plain and unambiguous meaning for the 'however clause.' Accordingly, we turn to the legislative history to facilitate our analysis." *Id.* at p. 844. The Senate Report accompanying the Omnibus Bankruptcy Improvements Act of 1983 ("OBIA"), the predecessor bill leading up to the BAFJA, cited in *Meyer* states:

> A number of cases have considered whether claims involving codebtors may be classified separately from other claims. Thus far, the majority of cases have refused to permit such classification on the ground that codebtor claims are not different than other claims. See, for example, *In re Utter*, 3 B.R. 369 (Bk. W.D.N.Y. 1980); *In re Montano*, 4 B.R. 535 (Bk. D.D.C. 1980).
>
> Although there may be no theoretical differences between codebtor claims and others, there are important practical differences. Often, the codebtor will be a relative or friend, and the debtor feels compelled to pay the claim. If the debtor is going to pay the debt anyway, it is important that this fact be considered in determining the feasibility of the plan. Sometimes, the codebtor will have posted collateral, and the debtor will feel obligated to make the payment to avoid repossession of the collateral. In still other cases, the codebtor cannot make the payment, and the effect of nonpayment will be to trigger a chapter 7 or chapter 13 petition by the codebtor, which may have a ripple effect on other parties as well. For these reasons, separate classification is often practically necessary.
>
> Courts under both the present Act and the former law have emphasized that plans must be realistic. For example, courts have refused to confirm plans which the debtor could not possibly perform; have insisted on realistic estimates of expenditures; and have considered debts which the debtor proposes to pay outside the plan in determining feasibility. *In re Washington*, 6 B.R. 226, 6 BCD 1094 (Bk. E.D. Va. 1980). This approach is eminently sensible. No purpose is served by confirming a plan which the debtor cannot perform. If, as a practical matter, the debtor is going to pay the codebtor claim, he should be permitted to separately classify it in a chapter

> 13. A result which emphasizes purity in classifying claims does so at the price of a realistic plan. Neither debtors nor creditors benefit from such a rigid approach, and the Committee has determined that statutory authority to separately schedule such debts will contribute to the success of plans contemplating repayment of same. Accordingly, this authority is provided for in the proposed bill by amendment to section 1322(b)(1).

S. Rep. No. 98-65 (1983). Then, discussing the cases of *In re Utter*, 3 B.R. 369 (Bk. W.D.N.Y. 1980); *In re Montano*, 4 B.R. 535 (Bk. D.D.C. 1980), the B.A.P. stated:

> In *Utter*, the joint debtors filed a chapter 13 plan separately classifying one unsecured claim, and proposing to pay that claim a 100% dividend, whereas all other unsecured creditors would receive little or nothing. *In re Utter*, 3 B.R. at 369. There was only one distinction between the preferred claim and the other unsecured claims: the sister of one of the joint debtors also was liable on that debt. *Id. Utter* denied confirmation of the debtors' plan for two reasons. First of all, according to the court, § 1122(a) (which § 1322(b)(1) incorporates by reference) did not permit the separate classification of substantially similar claims, and there was no legal distinction from the estate's perspective between the preferred claim and the other unsecured claims. *Id.* at 369-70. But the *Utter* court's second ground for denying confirmation is more important for our purposes; the *Utter* court held that the proposed preferential treatment of the codebtor claim "discriminates unfairly against the unsecured creditors who are classified in the class that does not contain co-signed debts." *Id.*
>
> *Montano* is quite similar to *Utter*. In *Montano*, the debtor had unsecured debt in the aggregate amount of roughly $30,000. *In re Montano*, 4 B.R. at 536. Of that $30,000, roughly $7,000 was owed on 'claims guaranteed by co-signors.' *Id.* The debtor's chapter 13 plan proposed a 100% dividend on the codebtor claims, and a 1% dividend on all other unsecured claims. *Id.* In denying confirmation of the debtor's plan, the *Montano* court articulated virtually identical grounds for denial as those articulated in *Utter*. *Id.* at 537. In relevant part, *Montano* held that "such classification, where cosigned debts are to be paid in full and other general unsecured debts are to be paid much less, unfairly discriminates against the latter class, and thus is [impermissible] under § 1322(b)(1)." *Id.*

Meyer, 470 B.R. at 845-46. The B.A.P. finally held that "[i]n light of the facts and holdings of *Utter* and *Montano*, and in light of Congress's citation of these two cases as exemplifying the case law it sought to address by amending § 1322(b)(1), we hold that Congress sought to permit a chapter 13 debtor to separately classify *and* to prefer a codebtor consumer claim when the facts are similar to those presented in *Utter* and *Montano*." *Meyer*, 470 B.R. at 846 (holding also that "[w]e acknowledge that our decision leaves open the issue of the precise relationship between the 'however clause' and the unfair discrimination rule. We intentionally have left unanswered the question of when (if ever) does the preferential treatment of a codebtor consumer claim violate the unfair discrimination rule.").

Not all Circuits have come to this conclusion regarding the "however clause." *See, e.g.*, *Ramirez v. Bracher* (*In re Ramirez*), 204 F.3d 595, 596 (5th Cir. 2000) (holding where debtors had failed to meet their burden of showing that the separate classification of co-signed debt did not unfairly discriminate against other unsecured creditors, the plan could not be confirmed).

The court is also aware of at least one case where, when there is evidence present to show paying a codebtor's debt in full would help the household's overall burden, a plan with different treatment of debtor's claimants and codebtor's claimants is confirmable. *See In re Linton*, Case No. 11-12258-SSM, 2011 LEXIS 2939 (Bankr. E.D. Va. 2011).

DISCUSSION

Here, no information is given as to what the NF-Spouse obtained for her debts. No Declaration is provided by the NF-Spouse as to these sole obligations of the NF-Spouse for which special treatment is sought to the disadvantage of other creditors in this bankruptcy case. Debtor submits his Declaration at Docket 17, but Debtor offers no explanation as to the discrepancy in payments respective creditors will receive during the pendency of this case.

If such debts incurred by and solely owned by the NF-Spouse are so overwhelming that having to pay them from future community property is not what Debtor thinks should occur, Congress has provided an avenue for relief – Debtor and the NF-Spouse actually file a joint bankruptcy case and both this Debtor and the NF-Spouse would have all the protection and benefits to protect future community property under the Federal Bankruptcy Code as written by Congress.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Eric Antonio Jenkins ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Confirm the Amended Plan is **XXXXXXX**.

5. 24-23545-E-13 DPC-1 KEVIN NORMAN Peter Macaluso OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 9-26-24 [39]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on September 26, 2024. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

1. Debtor Kevin James Norman ("Debtor") is delinquent $7,000 in plan payments. Obj. 2:3-10, Docket 39.

2. Debtor failed to file the business attachment to Schedule I. *Id.* at 2:15-25.

3. Debtor has not listed all expenses on Schedule J. *Id.* at 2:26

4. Debtor has not filed a notice of related cases, in violation of Local Bankruptcy Rule 1015-1, when Debtor's wife has an open bankruptcy case as well. *Id.* at 3:10-15.

Trustee submits the Declaration of Kristen Koo to authenticate the facts alleged in the Objection. Decl., Docket 41.

DISCUSSION

Delinquency

Debtor is $7,000 delinquent in plan payments, which represents one month of the plan payment. Before the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Failure to File Business Documents Required by Schedule I

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

Inaccurate or Missing Information

Debtor's Schedules J contains outdated or inaccurate information. Without an accurate picture of debtor's financial reality, the court is unable to determine if the Plan is confirmable. *See* 11 U.S.C. § 1325(a)(6).

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

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

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

6. **22-23246-E-13 WSS-2** | **TAMANY RESOVICH** / **Matthew Gilbert** | **CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY** **9-4-24 [98]**

DAVID DRADER VS.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, attorneys of record who have appeared in the bankruptcy case, creditors, and Office of the United States Trustee on September 3, 2024. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

Opposition was stated at the hearing.

The Motion for Relief from the Automatic Stay ~~is granted.~~

October 22, 2024 Hearing

The court continued the hearing on this Motion to allow Debtor time to cure the delinquency. The court set the following deadlines in continuing the hearing: Opposition to the Motion shall be filed and served on or before October 4, 2024, and Replies, if any, filed and served on or before October 16, 2024. Order, Docket 106.

On October 14, 2024, Movant filed a Status Report. Docket 114. Movant states that Debtor has managed to cure some of the delinquency that is subject of this Motion, but Debtor remains delinquent $1,850.86 and requests the Motion be granted. *Id.* at 2:3-9. This is Movant's second Motion for Relief, having been brought after Debtor again defaulted since curing the default of the original Motion for Relief.

At the hearing, **xxxxxxx**

REVIEW OF MOTION

Mary Drader and David Drader ("Movant") seek relief from the automatic stay with respect to Tamany Resovich's ("Debtor") real property commonly known as 5001 Bonanza Auto Road, Shingle Springs, California 95682 ("Property"). Movant has provided the Declaration of David Drader to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decl., Docket 100.

Movant argues Debtor has not made four post-petition payments, with a total of $3,549.32 in post-petition payments past due. Declaration ¶ 9, Docket 100. Mr. Drader testifies it is his opinion that the Property has a value of $300,000. *Id.* at ¶ 10. As of February 28, 2024, the principal balance owed on the Note is $124,517.05. Mot. 3:12-13, Docket 98.

Mr. Drader testifies that he is a he is "one of the owners of the real property commonly known as 4001 Bonanza Auto Road, Shingle Springs, California 95628." Dec., ¶ 1; Dckt. 100. As stated above, paragraph 10 of his Declaration states that " It is my opinion that the property is worth $300,000. No expert testimony or other evidence of value by Movant is provided.

Conflicting Evidence and Arguments as to Ownership of the Property

In paragraph 2 of the Motion it is stated that the Debtor "is the owner of the real property located at 5001 Bonanza Auto Road, Shingle Springs, California. . . ." Motion, ¶ 2; Dckt. 98. The Motion does not state that the Debtor only owns a fractional interest in the Property or that there are any other owners.

However, David Drader, under penalty of perjury, states that he is one of the owners of the Property, stating under penalty of perjury that there are multiple owners. Dec.; ¶ 1; Dckt. 100. Either the Declaration provides false testimony or the Motion is incorrect.

On Schedule A/B Debtor states under penalty of perjury that she is the sole owner of the Property and that it has a value of $300,000. Sch. A/B, ¶ 1.1; Dckt. 1. Movant's Motion does not provide this as evidence of the value of the Property.

DISCUSSION

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

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has

not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

SEPTEMBER 24, 2024 HEARING

At the hearing, counsel for Movant reported that one payment remained in default. Counsel for Debtor appeared in court with copies of the money orders for all payments, with the most recent having been sent approximately one week before the hearing.

The counsel shall confer with their clients to determine whether all payments have been received and this matter may be dismissed.

The hearing on the Motion for Relief from the Automatic Stay is continued to 2:00 p.m. on October 22, 2024 (Specially set time). Opposition to the Motion shall be filed and served on or before October 4, 2024, and Replies, if any, filed and served on or before October 16, 2024.

~~In this case, the court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.~~

~~The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.~~

No other or additional relief is granted by the court.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Relief from the Automatic Stay filed by Mary Drader and David Drader ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ~~ORDERED~~** ~~that the Motion is granted, and the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the real property commonly known as 5001 Bonanza Auto Road, Shingle Springs, California 95682 ("Property") to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the Property.~~

7. 24-21762-E-13 LINDA CATRON MOTION TO SET ASIDE
LC-8 Peter Macaluso 7-29-24 [40]

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

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

Sufficient Notice not Provided. Movant has not complied with Local Bankruptcy Rule 7005-1 which requires the use of a specific Eastern District of California Certificate of Service Form (Form EDC 007-005). This required Certificate of Service form is required not merely to provide for a clearer identification of the service provided, but to ensure that the party providing the service has complied with the requirements of Federal Rule of Civil Procedure 5, 7, as incorporated into Federal Rule of Bankruptcy Procedure 7005, 7007, and 9014(c).

At the hearing, **xxxxxxx**

The Motion to Vacate ~~is denied.~~

Linda Catron ("Debtor") files this Motion seeking an order of this court vacating the court's prior order issued on July 21, 2024, at Docket 36. The court's July 21, 2024 order confirmed that the automatic stay was not in effect in this case pursuant to 11 U.S.C. § 362(c)(4) and also granted creditor NewRez LLC d/b/a Shellpoint Mortgage Servicing ("Creditor") relief from stay pursuant to 11 U.S.C. § 362(d)(4). That order also granted relief from the co-debtor stay of 11 U.S.C. § 1301(a), and waived the fourteen-day stay of enforcement.

On July 29, 2024, Debtor filed this instant Motion to Vacate, realleging many of the same facts and arguments put forward in her Opposition to the Motion for Relief. *See* Opp'n, Docket 24. Debtor seeks to vacate the portion of the July 21, 2024 pertaining to relief granted pursuant to 11 U.S.C. § 362(d)(4).

Debtor seeks to have the order dismissing the case vacated, per Federal Rule of Civil Procedure 60(b). Debtor filed this Motion in pro se. The court summarizes the grounds upon which the relief is based as follows:

A. Debtor is an elder and Shellpoint has inflicted harm upon her. Motion, p. 2; Dckt. 40.

B. The judge was unable to have the Debtor explain the stress and confusion from being an elder and Debtor's medical condition. *Id.*

C. Debtor has demanded that the bank fix the vandalism they caused. *Id.*

D. Lender Bank of New York Mellon is part of a scheme that was conducting espionage on Debtor and violated bankruptcy stay orders. *Id.*

E. Lender has also been involved in hacking and stealing trade secrets and tampering with legal proceedings. *Id*.

F. Lender has been framing people after they violated the automatic stay, and then attempt to retroactively seek relief. *Id*.

G. Lender's misconduct includes violation of the Espionage Act, theft of trade secrets, and violation of privacy through illegal hacking and monitoring in violation of Computer fraud abuse act. *Id*.

H. The Attorney General is investigating this issue, which led to a murder to cover of the Lender's scheme. Debtor is a victim in this matter. *Id*.

I. If the order granting relief is not set aside, it will violate Debtor's settlement agreement, and put Debtor in violation of the agreement. *Id*.

J. Debtor is working on obtaining a loan modification. *Id*.

K. Debtor's loan was paid off in 2023 through a loan modification. *Id*.; p. 3.

L. The asset management company and it attorneys are framing and misrepresenting the trusts as coverup of crimes dating back 17 years which were uncovered. *Id*.

M. The Lender is part of an asset management company that has been fraudulently concealing their intentions and part of a conspiracy of cover up their crimes of violation of the bankruptcy automatic stay. *Id*.; p. 3-4. This includes using tactics as tools to conduct espionage and elder abuse and framing partners for the lender scheme to conduct crimes and illegal conversion of assets and equity using these methods through the bankruptcy court. *Id*.

N. The court should deny the for relied. *Id*.; p. 4.

Court's Prior Order

On July 21, 2024, the court entered an order granting relief from the automatic stay determining that there is no automatic stay in effect in this Bankruptcy Case pursuant to 11 U.S.C. § 362(c)(4). Order; Dckt. 36. 11 U.S.C. § 362(c)(4)(A) is the statutory provision enacted by Congress which provides that if an individual has had pending and dismissed two prior bankruptcy cases in the one year preceding the bankruptcy case subsequently filed, then no automatic stay goes into effect in the subsequently filed case.

Prior to the current case before the court filed on April 29, 2024, Debtor had pending and dismissed the following cases:

1. Case 23-22522.....Dismissed October 19, 2023

2. Case 24-21762.....Dismissed April 11, 2024

These dismissals are within the one-year period preceding the filing of the current Bankruptcy Case on April 29, 2024.

It is Congress which has written the law to state that no automatic stay has gone into effect in this Bankruptcy Case. Congress also provides in 11 U.S.C. § 362(c)(4)(B), that a debtor may seek to impose (create) an automatic stay in a case where 11 U.S.C. § 362(c)(4)(A) prevents it from automatically going into effect.

The court also impose relief pursuant to 11 U.S.C. § 362(d)(4)(A), providing that no automatic stay would go into effect for a two year period after the entry of the above over in this case. However, such does not preclude a debtor from requesting that the stay be imposed in a subsequently filed case, as provided in 11 U.S.C. § 362(d)(4)(B).

CREDITOR'S OPPOSITION

Creditor filed an Opposition on September 9, 2024. Docket 46. Creditor recounts the facts of this case and the facts surrounding their Motion for Relief, then states:

> 1. All of the arguments set forth by the Debtor in her instant Motion can and should be disregarded as they all could have been alleged in Debtor's Opposition to Relief Motion and/or at the time of the hearing on the relief Motion as such arguments are based on documents, theories or events that existed and/or occurred prior to the entry of the In Rem Order. *Id.* at 9:20-23.
>
> 2. Debtor's attempt to re-hash these arguments here simply cannot stand as Debtor is well aware that these arguments failed to pose any challenge to the Motion for Relief. *Id.* at 9:25-26.

DEBTOR'S REPLY

Debtor filed a Reply to the Opposition on October 15, 2024. Docket 52. Debtor makes no legal arguments and cites not law in support of the Reply. Debtor states:

> 1. Here, while not objecting to the relief as to Bruce Chadbourne, Mohammad Mahmood Khan, and Ayesha Khan, the Debtor seeks one last chance of redemption, be it a Loan Modification which was unjustly denied, or monthly payments. *Id.* at 3:7-10.

Debtor then states: "Debtor requests that the Trustee's Motion be granted." *Id.* at 3:11-12.

Debtor filed an additional Declaration on October 16, 2024. Docket 55. Debtor states she requests a continuance, stating she has recently relieved Mr. Macaluso as her counsel in this case. Debtor states she will have new counsel by November 15, 2024.

APPLICABLE LAW

Federal Rule of Civil Procedure Rule 60(b), as made applicable by Federal Rule of Bankruptcy Procedure 9024, governs the reconsideration of a judgment or order. Grounds for relief from a final judgment, order, or other proceeding are limited to:

> (1) mistake, inadvertence, surprise, or excusable neglect;
>
> (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
>
> (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
>
> (4) the judgment is void;
>
> (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
>
> (6) any other reason that justifies relief.

FED. R. CIV. P. 60(b). A Rule 60(b) motion may not be used as a substitute for a timely appeal. *Latham v. Wells Fargo Bank, N.A.*, 987 F.2d 1199, 1203 (5th Cir. 1993). The court uses equitable principles when applying Rule 60(b). *See* 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 2857 (3d ed. 1998). The so-called catch-all provision, Federal Rule of Civil Procedure 60(b)(6), is "a grand reservoir of equitable power to do justice in a particular case." *Uni-Rty Corp. V. Guangdong Bldg., Inc.*, 571 F. App'x 62, 65 (2d Cir. 2014) (citation omitted). While the other enumerated provisions of Rule 60(b) and Rule 60(b)(6) are mutually exclusive, relief under Rule 60(b)(6) may be granted in extraordinary circumstances. *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863 & n.11 (1988).

A condition of granting relief under Rule 60(b) is that the requesting party show that there is a meritorious claim or defense. This does not require a showing that the moving party will or is likely to prevail in the underlying action. Rather, the party seeking the relief must allege enough facts that, if taken as true, allow the court to determine if it appears that such defense or claim could be meritorious. 12 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶¶ 60.24[1]–[2] (3d ed. 2010); *see also Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984).

Additionally, when reviewing a motion under Rule 60(b), courts consider three factors: "(1) whether the plaintiff will be prejudiced, (2) whether the defendant has a meritorious defense, and (3) whether culpable conduct of the defendant led to the default." *Falk*, 739 F.2d at 463 (citations omitted).

DISCUSSION

As an initial policy matter, the finality of judgments is an important legal and social interest. The standard for determining whether a Rule 60(b)(1) motion is filed within a reasonable time is a case-by-case analysis. The analysis considers "the interest in finality, the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to other parties." *Gravatt v. Paul Revere Life Ins. Co.*, 101 F. App'x 194, 196 (9th Cir. 2004) (citations omitted); *Sallie Mae Servicing, LP v. Williams (In re Williams)*, 287 B.R. 787, 793 (B.A.P. 9th Cir. 2002) (citation omitted).

In this case, Debtor has not offered any justifiable grounds to vacate the July 21, 2024 order. Debtor has not presented any facts that would justify Federal Rule of Civil Procedure Rule 60(b) relief. Instead, Debtor is rehashing the arguments that were used during the prosecution of the Motion for Relief. For example, Debtor again states Creditor engaged in vandalism of the Property, Creditor has engaged in espionage, and Creditor has violated the automatic stay. Those arguments were extensively addressed by the court in the Civil Minutes at Docket 34 and will not be readdressed in this present Motion.

Therefore, in light of ~~the foregoing, the Motion is denied.~~

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Vacate filed by Linda Catron ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the~~ Motion is denied.~~

8. 24-22765-E-13 KLG-2 | **MARVIN COSPER** Arete Kostopoulos | **MOTION TO CONFIRM PLAN** 9-8-24 [31]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, attorneys of record, and Office of the United States Trustee on September 8, 2024. By the court's calculation, 44 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

The debtor, Marvin Lovell Cosper ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for 60 monthly payments of $4,410 each with an estimated 59% dividend to unsecured claims. Amended Plan, Docket 30. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on October 8, 2024. Docket 42. Trustee opposes confirmation of the Plan on the basis that Debtor is delinquent $10,703.79 in plan payments.

DISCUSSION
Delinquency

The Chapter 13 Trustee asserts that Debtor is $10,703.79 delinquent in plan payments, which represents multiple months of the $4,410 plan payment. Before the hearing, another plan payment will be due. According to the Chapter 13 Trustee, the Plan in § 2.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

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

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

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

9. 23-24677-E-13 CRG-2 — ARMANDO/MIRIAM RAMIREZ — Carl Gustafson — OBJECTION TO CLAIM OF LENDINGCLUB BANK, NA, CLAIM NUMBER 13 — 9-3-24 [48]

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Chapter 13 Trustee, parties requesting special notice, creditors that have filed claims, and Office of the United States Trustee on September 3, 2024. By the court's calculation, 49 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

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

The Objection to Proof of Claim Number 13-1 of LendingClub Bank, NA is sustained, and the claim is disallowed in its entirety.

Armando Yalong Ramirez and Miriam Rose So Ramirez, Chapter 13 Debtor, ("Objector") requests that the court disallow the claim of LendingClub Bank, NA ("Creditor"), Proof of Claim No. 13-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $22,368.82. Objector asserts that, pursuant to Fed. R. Bankr. P. 3001(c), the Claim should be disallowed as Creditor has not filed the writing on which the Claim is based.

DISCUSSION

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

Fed. R. Bankr. P. 3001(c) states:

> (c) Supporting Information.
>
> > (1) Claim Based on a Writing. Except for a claim governed by paragraph (3) of this subdivision, when a claim, or an interest in property of the debtor securing the claim, is based on a writing, a copy of the writing shall be filed with the proof of claim. If the writing has been lost or destroyed, a statement of the circumstances of the loss or destruction shall be filed with the claim.
> >
> > (2) Additional Requirements in an Individual Debtor Case; Sanctions for Failure to Comply. In a case in which the debtor is an individual:
> >
> > > (A) If, in addition to its principal amount, a claim includes interest, fees, expenses, or other charges incurred before the petition was filed, an itemized statement of the interest, fees, expenses, or charges shall be filed with the proof of claim.
> > >
> > > (B) If a security interest is claimed in the debtor's property, a statement of the amount necessary to cure any default as of the date of the petition shall be filed with the proof of claim.
> > >
> > > (C) If a security interest is claimed in property that is the debtor's principal residence, the attachment prescribed by the appropriate Official Form shall be filed with the proof of claim. If an escrow account has been established in connection with the claim, an escrow account statement prepared as of the date the petition was filed and in

> a form consistent with applicable nonbankruptcy law shall be filed with the attachment to the proof of claim.
>
> (D) If the holder of a claim fails to provide any information required by this subdivision (c), the court may, after notice and hearing, take either or both of the following actions:
>
> > (i) preclude the holder from presenting the omitted information, in any form, as evidence in any contested matter or adversary proceeding in the case, unless the court determines that the failure was substantially justified or is harmless; or
> >
> > (ii) award other appropriate relief, including reasonable expenses and attorney's fees caused by the failure.

Debtor provides evidence that they asked for the writing that is the basis of this Claim on March 25, 2024, and then again on May 31, 2024. Decl. ¶¶ 5-7. Debtor never received a copy of the writing. A review of the Claim shows that it was purportedly based on an "unsecured loan." POC 13-1 at ¶ 8. However, the writing evidencing such loan is not included with the Claim, as is required by Fed. R. Bankr. P. 3001(c)(1).

The court notes that the attachment to Proof of Claim 13-1 includes a document titled "Borrower Documents and Information." There is a section titled "Loan Documents," and under that it states that there is a "borrower agreement." POC 13-1 attachment, p. 2. No such "borrower agreement" is provided, as are none of the other documents referenced.

This Attachment also includes other information purportedly about this Claim. This additional information includes:

A. The Loan was issued on March 18, 2022.

B. Original Loan was Purchased on March 21, 2022.

This indicates the loan was sold, and it is not the original lender who is now the creditor.

C. Investor Purchase History:

1. March 21, 2022

2. April 7, 2022

This appears that there were post loan investors who may have subsequently purchased the obligation.

The Objection is sustained and Proof of Claim 13-1 is disallowed in its entirety.

Request for Attorney's Fees

In the prayer, a request is made for creditor to be "charged with paying Debtor's attorney's fees, as shown by evidence and declaration." Motion, prayer ¶ (E); Dckt. 48.

No evidence of attorney's fees and expenses incurred has been provided by Debtor. No contractual or statutory basis for an award of attorney's fees has been stated.

Prevailing party attorney's fees and costs may be sought by Debtor, if proper, by post judgment motion (the order constituting a judgment). As noted above, though not state in the Motion, Federal Rule of Bankruptcy Procedure 3001(c)(2) may provide a basis for the award of such fees and costs.

Debtor also requests in the prayer that the court order (identified by paragraph number in the prayer):

> (A) That Claimant is prohibited from presenting the omitted information, in any form, as evidence in any contested matter or adversary proceeding in the case;
> . . .
> (C) That the Creditor be precluded from filing any amendment, modified or substitute claim in this case;
> . . .
> (D) That the underlying debt be canceled and forever discharged whether or not the Debtors receive their Discharge Order in this case; . . . .

.

Obj. 2:22-3:7, Docket 48.

Federal Rule of Bankruptcy Procedure 3001(c)(D)(i) provides for the relief requested in paragraph (A) above, but no authority is shown for the other relief requested.

Based on the evidence before the court, Creditor's claim is disallowed in its entirety. Creditor is also prohibited from presenting the omitted information, in any form, as evidence in any contested matter or adversary proceeding in the case.

Prevailing party attorney's fees and costs, if any, shall be requested by post-judgment motion.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of LendingClub Bank, NA ("Creditor"), filed in this case by Armando Yalong Ramirez and Miriam Rose So Ramirez, Chapter 13 Debtor, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Proof of Claim Number 13-1 of Creditor is sustained, and Proof of Claim Number 13-1 is disallowed in its entirety.

IT IS FURTHER ORDERED that Creditor is precluded from presenting the omitted information, in any form, as evidence in any contested matter or adversary proceeding in the case, unless the court later determines at a noticed hearing that the failure was substantially justified or is harmless.

IT IS FURTHER ORDERED that other relief requested in the prayer, paragraphs (C), (D), and (F), and each of them, are denied without prejudice.

Attorney's Fees and Costs, if any, shall be requested by post-judgment motion (this order constituting a "judgement") in this Contested Matter.

10. 22-23383-E-13 **LORRAINE COHEN**
Chinonye Ugorji

MOTION FOR PAYMENT OF UNCLAIMED FUNDS IN THE AMOUNT OF $5420.91 WITH EDDIE COHEN III
9-10-24 [52]

CASE CLOSED: 01/22/24

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on June 11, 2024. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

The Application for Unclaimed Funds is xxxxxxx.

This matter comes before the Court pursuant to 11 U.S.C. § 347(a), 28 U.S.C. § 2042, and the application of Eddie Cohen III ("Applicant"), seeking payment of funds previously unclaimed by Lorraine Cohen in the above-entitled case.

The Application states that Eddie Cohen III states that he is a representative of Lorraine Cohen's estate. Application, § 3; Dckt. 52 at 2. No documentation of being such a representative is provided.

A document titled Report of Death of a U.S. Citizen or U.S. Non-Citizen National Abroad is attached to the Application. *Id*. at 13. This document is not under seal or certified by the government agency.

Applicant has not presented the court with any evidence that Applicant is entitled to claim any unclaimed funds in this case. There is no probate order or similar document that shows Eddie Cohen III is the lawful representative entitled to claim unclaimed funds of Lorraine Cohen in this case. At the hearing, **xxxxxxx**

The court shall issue an order stating:

~~**IT IS ORDERED** that the Application for the disbursement of unclaimed funds is denied without prejudice.~~

11. 24-22488-E-13 JMF-1 — STEVEN/DEBBIE NOMMSEN — Jacob Faircloth — AMENDED MOTION TO CONFIRM PLAN — 9-12-24 [39]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 12, 2024. By the court's calculation, 40 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is xxxxxxx .

The debtor, Steven A. Nommsen and Debbie L. Nommsen ("Debtor"), seek confirmation of the Amended Plan. The Amended Plan provides for 60 monthly payments of $1,661 with an estimated dividend of 55% to unsecured claims. Amended Plan, Docket 36. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on October 2, 2024. Docket 50. Trustee opposes confirmation of the Plan on the basis that:

1. The Plan is overextended as proposed. The Plan proposes payments of $1,661.00 per month, for 60 months, and will pay 55% to unsecured creditors. The Plan will not complete in 60 months as Class 1 calls for the mortgage to be paid $2,203.70 per month for the ongoing payment as Class 1, which is more than the plan payment. *Id.* at 2:1-5.

2. Shellpoint Mortgage Servicing is listed in Class 1, and Class 4, of the Plan. NewRez, LLC DBA Shellpoint Mortgage Servicing filed a Proof of Claim, which shows a delinquency of $1,736.95, due to a projected escrow shortage. POC 5-1. If Debtor intends the Trustee to make only the arrears payment and intends to make the ongoing payment, the Debtor should have added nonstandard provisions explain this treatment. The plan works if the Court allows this treatment. *Id.* at 2:6-13.

DEBTOR'S REPLY

Debtor filed a Reply on October 9, 2024. Docket 53. Debtor states Trustee is correct that Debtor intends to pay the mortgage outside the Plan and Trustee is only to make payments on the arrearage.

DISCUSSION

Debtor's proposed Chapter 13 Plan provides for Shellpoint Mortgage servicing to have a Class 1 Secured Claim. The Plan provides that Shellpoint will be paid $32.28 a month as the cure installment of the ($1,736.95) arrearage, and 2,204.70 as the regular monthly post-petition installment on the Shellpoint claim. Amd. Plan, § 3.07; Dckt. 36.

The Class 1 claim treatment expressly provides that both the cure payment and the current post-petition monthly installment will be paid by the Chapter 13 Trustee through the Plan. Amd Plan, ¶ 3.07(b).

Debtor attempts to place Shellpoint Mortgage's secured claim also in Class 4, to pay an additional $2,203.70 a month by the Debtor. Amd. Plan, § 3.10. To be a Class 4 Claim in the Chapter 13 Plan, the Plan expressly states:

> **Class 4 claims** mature after the completion of this plan, **are not in default**, and **are not modified by this plan**. These claims shall be paid by Debtor or a third person whether or not a proof of claim is filed or the plan is confirmed

Amd. Plan, ¶ 3.10; Dckt. 36.

Here, it is not disputed that there is a default in the claim - Debtor expressly providing for the cure thereof through the Plan. This modifies Creditor's claim. Thus, the Shellpoint Mortgage Claim does not qualify as a Class 4 claim.

Review of Proof of Claim 5-1

The Shellpoint Mortgage Proof of Claim 5-1 states that there is a pre-petition **DEFAULT** of ($1,736.95) as of the filing of this Bankruptcy Case. POC 5-1, § 9.

However, on the Mortgage Proof of Claim Attachment Shellpoint Mortgage states that the ($1,736.95) projected escrow shortage, not any default in payments. Thus, it may well be that Shellpoint Mortgage is misstating its claim, and there is no pre-petition default. Rather, it may be that Shellpoint Mortgage has miscomputed the monthly escrow payment amount and needs to increase that amount going forward.

Unfortunately, by filing a proof of claim stating that there is a pre-petition **DEFAULT**, Debtor is forced to provide for this claim in Class 1.

In theory, if Shellpoint Mortgage were to increase the monthly escrow payment going forward to properly fund the escrow (Shellpoint Mortgage correctly computing that amount) and also keep its Proof of Claim in place, Shellpoint Mortgage would be "double dipping," and getting the ($1,736.95) paid twice.

It may be that the Debtor, or the Chapter 13 Trustee, needs to file an objection to the claim, correct what appears to be an error in the Proof of Claim, and then recover the costs and expenses for such litigation pursuant to the attorney's fees provisions of the underlying loan documents.

At the hearing, **xxxxxxx**

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Steven A. Nommsen and Debbie L. Nommsen ("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 **xxxxxxx**

12. 24-21498-E-13 RTD-1 — MICHAEL/SUSAN COLE — Eric Schwab — MOTION TO DISMISS CASE — 9-24-24 [67]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, attorneys of record, creditors that have filed claims, parties requesting special notice, and Office of the United States Trustee on September 24, 2024. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss is granted.

Safe Credit Union ("Creditor"), seeks dismissal of the case on the basis that:

1. The debtor, Michael Allan Cole and Susan Rae Cole ("Debtor"), have engaged in unreasonable delay that is prejudicial to creditors. Debtor did not timely file a Motion to Confirm the original Plan, which was denied. Debtor did not timely provide Trustee with documents related to the filing. Debtor has not filed a second Amended Plan or Motion to Confirm after the court denied confirmation of the previous Plan. Mot. 4:3-25, Docket 67.

2. Debtor has acted in bad faith throughout the case. Debtor has filed schedules with inaccurate or missing information, Debtor has delayed in providing financial information, and Debtor has used funds of the estate for a trip out of town to support a failing business, Empower Performance Strategies. Debtor has still not filed the business attachment required by Schedule I. Mot. 4:28-7:10.

3. Creditor submits that the Debtors have made minimal effort to familiarize themselves with their business affairs and to timely file complete and accurate documents. Instead they have used the protection of the automatic stay to travel out of state and to eat at restaurants, make purchases at Starbucks and use doordash for grocery and food deliveries from the business account. *Id.* at 6:28-7:4.

4. Creditor requests dismissal with a 180-day bar to refiling.

Creditor submitted the Declarations of Roxanne T. Daneri and Robin Boyce to authenticate the facts alleged in the Motion. Decl., Dockets 69, 70.

TRUSTEE'S RESPONSE

On October 8, 2024 Trustee filed a Response joining in support of Creditor's Motion to Dismiss. Docket 74. Trustee states no Plan is pending and Trustee agrees with the Motion.

DEBTOR'S RESPONSE

Debtor filed a Response on October 8, 2024. Docket 75. Debtor states the discrepancy in the Schedules arises because at the time of filing, Debtor was winding up their previous business activities and starting new activities, so income and expenses have changed due to the dynamic nature of starting up new business activities. *Id.* at ¶ 2. Debtor states they are formulating an Amended Plan to take into account Creditor's concerns, so this Motion should be continued to the same day as the Motion to Confirm the Amended Plan that will likely be set for either November 19, 2024 or December 10, 2024. *Id.* at 2:8-12.

Debtor filed a Declaration in support of the response at Docket 76 that reiterates, almost verbatim, what is alleged in the Response.

CREDITOR'S REPLY

Creditor filed a Reply to the Responses on October 14, 2024. Docket 80. Creditor reiterates its points, and asks why Debtor has not amended Schedules in six months if Debtor's circumstances have been changing. Creditor calls into question the accuracy of Schedules and representations Debtor has made throughout the case, and repeats its prayer.

DISCUSSION
Bad Faith

11 U.S.C. § 1307(c) provides:

> Except as provided in subsection (f) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including –
>
> (1)unreasonable delay by the debtor that is prejudicial to creditors.
> . .

The list of enumerated reasons to dismiss a case does not include a case being filed or prosecuted in bad faith, but courts have decided bad faith is a valid reason to warrant dismissal or conversion. *See In re Leavitt*, 171 F.3d 1219, 1224 (9th Cir. 1999) ("Although not specifically listed, bad faith is a 'cause' for dismissal under § 1307(c)."); *See also In re Eisen*, 14 F.3d 469, 470 (9th Cir. 1994) ("A Chapter 13 petition

filed in bad faith may be dismissed 'for cause' pursuant to 11 U.S.C. § 1307(c)."). The following factors are considered in a bad faith analysis:

> (1) whether the debtor misrepresented facts in his petition or plan, unfairly manipulated the Bankruptcy Code, or otherwise filed his Chapter 13 petition or plan in an inequitable manner,
>
> (2) the debtor's history of filings and dismissals,
>
> (3) whether the debtor only intended to defeat state court litigation,
>
> (4) whether egregious behavior is present.

Leavitt, 171 F.3d at 1224 (internal citations omitted).

In this case, the court finds there is cause for dismissal of the case, including there being unreasonable delay and the case proceeding in bad faith. Debtor explains to the court that the situation is dynamic and changing, therefore there have been inaccurate or omitted information in the schedules. Yet, the court addressed the inaccuracies and omitted information as far back as July of 2024. See Civil Minutes, Docket 50.

The court again addressed the concerns in the Civil Minutes denying confirmation of the previous Plan. Docket 65. Yet, Debtor has not filed a set of Amended Schedules to address these concerns. In fact, Debtor's most recently filed Schedules at Docket 22 were filed in May of 2024, five months ago. Debtor offers no explanation for this delay.

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

Debtor promises to file a Plan, but no Plan is on file, and the case is languishing without moving forward.

The court concludes Debtor has been engaging in unreasonable delay that is prejudicial to creditors, and the court finds cause to dismiss the case pursuant to 11 U.S.C. § 1307(c). The Motion is granted, and the case is dismissed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss the Chapter 13 case filed by Safe Credit Union ("Creditor"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

FINAL RULINGS

13. 24-22204-E-13 TLA-1 | **EHREN/NICOLE HOLLOWAY** | **MOTION FOR COMPENSATION BY THE LAW OFFICE OF AMBERG AND HARVEY FOR THOMAS L. AMBERG, JR., DEBTORS ATTORNEY(S)**
Thomas Amberg | **9-17-24 [18]**

Final Ruling: No appearance at the October 22, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on September 17, 2024. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Interim Professional Fees is granted.

Thomas L. Amberg, Jr., the Attorney ("Applicant") for Ehren Lee Holloway and Nicole Marie Holloway, the Chapter 13 Debtor ("Client"), makes a First Interim Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period of April 25, 2024 through September 17, 2024. Applicant requests fees in the amount of $3,672.50 and costs in the amount of $90. Mot. 2:5-7, Docket 18. Applicant was paid $1,500 prepetition for work done prepetition, so Applicant requests $2,172.50 of fees and the $90 of costs be paid through the Plan and the court authorize Applicant to apply the $1,500 prepetition retainer payment to the fees immediately. *Id.* at 2:8-12.

Applicant opted out of the no-look fee provisions of the Chapter 13 Plan. *See* Plan, Docket 3; Order Confirming Plan, Docket 15.

The Chapter 13 Trustee filed a nonopposition on October 8, 2024. Docket 24.

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An attorney must exercise good billing judgment with regard to the services provided because the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign to run up a

[professional fees and expenses] tab without considering the maximum probable recovery," as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat'l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is mandatory."). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

A review of the application shows that Applicant's services for the Estate include meeting with Client and analyzing her situation, creating and reviewing the Debtor's schedules, proposing a Chapter plan, attending Debtor's 341 hearing, confirming the Debtor's plan, communicating with Debtor, and reviewing claims filed in the Debtor's case. Mot. 215-20, Docket 18. Applicant submitted an authenticated Task Billing Summary into evidence, detailing these areas of work as Exhibit B, Docket 35. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Thomas L. Amberg, Jr	11.3	$325.00	$3,672.50
Total Fees for Period of Application			$3,672.50

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $45 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Credit Reports	$45.00	$90.00
Total Costs Requested in Application		$90.00

FEES AND COSTS & EXPENSES ALLOWED

Fees
Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First Interim Fees in the amount of $3,672.50 are approved pursuant to 11 U.S.C. § 331, and subject to final review pursuant to 11 U.S.C. § 330. Fees in the amount of $3,672.50 are authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan. Applicant is authorized to apply the $1,500 retainer for prepetition work toward the fee amount immediately.

Costs

First Interim Costs in the amount of $90 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

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

Fees	$3,672.50
Costs and Expenses	$90

pursuant to this Application as interim fees pursuant to 11 U.S.C. § 331 in this case. Applicant is further authorized to apply the $1,500 retainer for prepetition work toward the fee amount immediately.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Thomas L. Amberg, Jr. ("Applicant"), Attorney for Ehren Lee Holloway and Nicole Marie Holloway, the Chapter 13 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 Thomas L. Amberg, Jr. is allowed the following fees and expenses as a professional of the Estate:

Thomas L. Amberg, Jr., Professional employed by the Chapter 13 Debtor

Fees in the amount of $3,672.50
Expenses in the amount of $90,

as an interim allowance of fees and expenses pursuant to 11 U.S.C. § 331 and subject to final review and allowance pursuant to 11 U.S.C. § 330.

IT IS FURTHER ORDERED that Applicant is authorized to apply the $1,500 retainer for prepetition work toward the fee amount immediately, and the Chapter 13 Trustee is authorized to pay the remainder from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

14. 22-21314-E-13 PGM-6 | **NADIA ZHIRY** | **Peter Macaluso** | **MOTION TO CONFIRM PLAN** | **9-11-24 [420]**

DEBTOR DISMISSED: 09/20/24

Final Ruling: No appearance at the October 22, 2024 Hearing is required.

The case having previously been dismissed, the Motion is denied as moot without prejudice. Order, Docket 434.

The Motion to Dismiss is denied as moot without prejudice, the case having been dismissed on September 20, 2024,

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

IT IS ORDERED that the Motion is denied as moot without prejudice, the case having been dismissed.

15. 24-23627-E-13 FEC-1 | **JASON PRASAD** / **Paul Bains** | **MOTION FOR COMPENSATION BY THE LAW OFFICE OF BAINS LEGAL, PC FOR PAULDEEP BAINS, DEBTORS ATTORNEY(S)** **9-16-24 [19]**

DEBTOR DISMISSED: 09/04/24

Final Ruling: No appearance at the October 22, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 16, 2024. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Pauldeep Bains, the Attorney ("Applicant") for Jason Anand Prasad, the Chapter 13 Debtor ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period August 12, 2024, through the date of this Motion. Applicant requests fees in the reduced amount of $2,575 and no costs.

David Cusick, the Chapter 13 Trustee ("Trustee") filed a nonopposition on October 8, 2024, but stated he holds no money, and so Applicant would need to receive compensation directly from Debtor.

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

> (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?

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

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

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

A review of the application shows that Applicant's services for the Estate include filing a skeletal petition and halting a foreclosure sale of Debtor's residence. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 8.5 hours in this category. Applicant filed the petition and discussed prosecuting a successful case.

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

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Pauldeep Bains	11.35	$350.00	$3,972.50
Total Fees for Period of Application Requested at Reduced Rate			$2,575.00

FEES ALLOWED

Fees
Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $2,575.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Debtor.

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

Fees $2,575.00

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Pauldeep Bains, the Attorney ("Applicant") for Jason Anand Prasad, the Chapter 13 Debtor, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Pauldeep Bains is allowed the following fees and expenses as a professional of the Estate:
>
> Pauldeep Bains, Professional employed by the Chapter 13 Debtor,
>
> Fees in the amount of $2,575.00,
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 13 Debtor.
>
> **IT IS FURTHER ORDERED** that the Chapter 13 Debtor is authorized to pay the fees and costs allowed by this Order.

16. 24-22050-E-13 DPC-2 | **JOSE GARCIA** Peter Macaluso | **CONTINUED MOTION TO DISMISS CASE** 7-8-24 [46]

Item 16 thru 17

Final Ruling: No appearance at the October 22, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on July 8, 2024. By the court's calculation, 37 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss is denied without prejudice.

REVIEW OF THE MOTION

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. The debtor, Jose Antonio Garcia ("Debtor"), is delinquent $4,050.00 in plan payments. Debtor never commenced making plan payments. Mot. 1:25-26, Docket 46.

Trustee submitted the Declaration of Neil Enmark to authenticate the facts alleged in the Motion. Decl., Docket 48.

DEBTOR'S RESPONSE

Debtor filed a Response on July 31, 2024. Docket 58. Debtor states, without filing any evidence in support, that he has been victim of a "horrible crime" that has delayed prosecution of the case.

This "Opposition" filed by Debtor's counsel is little more than Debtor's counsel directing the court to enter an order in favor of Debtor.

DISCUSSION
Delinquent

Debtor is $4,050.00 delinquent in plan payments, which represents one month of the plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Here, Debtor argues a horrible crime has occurred. Debtor does not offer any evidence in support of this argument, nor does Debtor provide even a generalized description of what crime has occurred in this case that has caused the delinquency.

This is not Debtor's only recently filed bankruptcy case. On October 2, 2023, Debtor with the assistance of his current counsel commenced Chapter 13 Case 23-23473 (Debtor's "First CH 13 Case"). Debtor's First CH 13 Case was dismissed on May 2, 2024. 23-23473; Dismissal Order, Dckt. 68. The Current Chapter 13 Case was filed by Debtor and his counsel on May 13, 2024 (eleven days after dismiss of Debtor's First CH 13 Case).

The Debtor's First CH 13 Case was dismissed due to monetary defaults, failure to provide tax returns, and failure of Debtor to file tax returns in 2019. 2020. 2021, and 2022. *Id*.; Civ. Minutes, Dckt. 67 at 2.

At the hearing, Debtor's counsel provided some additional information concerning the "crime events" and their extraordinary nature. Debtor's counsel explained why communication difficulties had arisen and steps he would take to address that.

Though the Chapter 13 Trustee requested a conditional dismissal order requiring the Debtor to be current on all Plan payments by September 3, 2024, the court determines that continuance of the hearing to 9:00 a.m. on September 18, 2024, is proper under these facts and circumstances represented to the court by Debtor's counsel.

SEPTEMBER 28, 2024 HEARING

At the prior hearing held on August 14, 2024, counsel for Debtor presented the court with facts detailing extraordinary events surrounding this Debtor that gave rise to the delinquency. The court continued the hearing in light of these arguments.

The Debtor has filed an Amended Plan and Motion to Confirm. At the request of the Chapter 13 Trustee, the hearing on the Motion to Dismiss is continued to 2:00 p.m. on October 22, 2024, to be conducted in conjunction with the hearing on the Motion to Confirm a Chapter 13 Plan.

October 22, 2024 Hearing

The court continued the hearing on this Motion to be heard in conjunction with Debtor's Motion to Confirm Plan. The court is granting the Motion to Confirm Plan by final ruling.

The Motion to Dismiss is denied without prejudice.

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

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

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

IT IS ORDERED that the Motion to Dismiss is denied without prejudice.

17. 24-22050-E-13 PGM-2 | **JOSE GARCIA** | **Peter Macaluso** | **MOTION TO CONFIRM PLAN** | **9-12-24 [71]**

Final Ruling: No appearance at the October 22, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 12, 2024. By the court's calculation, 40 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Jose Antonio Garcia ("Debtor") has provided evidence in support of confirmation. *See* Decl., Docket 73; Exhibits, Docket 75. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on October 8, 2024. Docket 91. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

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

IT IS ORDERED that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on September 12, 2024, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

18. 23-20751-E-13 AT-1 | **FLYNN JEMERSON** | **Matthew DeCaminada** | **CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY** | **8-27-24 [57]**

LIGHTHOUSE AT BRIDGEPORT OWNERS' ASSOCIATION VS.

Item 18 thru 19

Final Ruling: No appearance at the October 22, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on August 27, 2024. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion for Relief from the Automatic Stay is denied without prejudice.

REVIEW OF THE MOTION

Lighthouse at Bridgeport Owners' Association ("Movant") seeks relief from the automatic stay with respect to Flynn Earl Jemerson's ("Debtor") real property commonly known as 363 Lighthouse Drive, Vallejo, California 94590 ("Property"). The Motion seeks relief to allow Movant to proceed with a foreclosure of the Property.

Movant has provided the Declaration of Terin Reeder to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decl., Docket 59.

Movant argues Debtor has fallen behind on assessment obligations to the Movant and is currently post-petition delinquent in the amount of ($13,312.11). Mot. 1:28-21, Docket 57; Decl ¶ 5, Docket 59. Movant provides authenticated Exhibits, although improperly attached to the Declaration (LOCAL BANKR. R. 9004-2(c)(1)), that show Debtor is obligated to pay monthly payments of $619.19, and Debtor has only made three of those postpetition payments. Decl ¶ 5, Docket 59. Movant requests relief pursuant to 11 U.S.C. § 362(d)(1), (2), and (3). Mot. 1:23, Docket 57.

The Movant is a non-profit association charged with the management, governance and operation of the developed community known as Lighthouse at Bridgeport. *Id*., 2:6-8. The monthly assessment due Movant is ($619.19). *Id*., 2:22.

The ($13,312.11) post-petition assessment arrearage consists of:

Regular Assessments.....($2,871.54)

Special Assessments.....($ 578.66)

Late Fees.....($ 325.47)

Interest.....($ 79.95)

Collection Charges.....($1,071.01)

Agent Fee.....($ 75.00)

Other.....($ 455.00)

Exhibit D, Notice of Assessments; Dckt. 59.

DISCUSSION

Confirmation of Modified Plan

On August 28, 2024, this court entered an order granting the Debtor's Motion to Confirm the Modified Chapter 13 Plan in this Case. Order; Dckt. 56. The Confirmation Order itself has not yet been entered on the Docket.

The Modified Plan provides for Movant's claim in the amount of ($32,572.25) to be paid through the Plan with a monthly dividend of $660.00. Plan, ¶ 3.08; Dckt. 47.

On April 10, 2023, Movant filed Proof of Claim 1-1 stating a pre-petition claim for HOA Assessment defaults in the amount of ($32,572.25). The Modified Plan addresses only that Claim and does not appear to address post-petition defaults.

Relief From Stay

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be $13,312.11 (Decl ¶ 5, Docket 59.), while the value of the Property is determined to be $275,000, as stated in Schedules A/B filed by Debtor. Schedule A/B 11:1.1, Docket 1.

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

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

From the evidence presented, Debtor has defaulted in:

1. Four and one-half months of assessments, ($2,871.54)/($619.19) per month, and

2. A special assessment of ($578.66).

Then there is the interest, late fees, collection fees, agent fees, and "other" amount added to the actual assessments.

Here, Debtor retains the property for which the assessments are due, presumably is getting the benefits being provided by Movant, and has defaulted in the post-petition payments to Movant.

The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

11 U.S.C. § 362(d)(2)

A debtor has no equity in property when the liens against the property exceed the property's value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective rehabilitation. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988); 3 COLLIER ON

BANKRUPTCY ¶ 362.07[4][b] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.) (stating that Chapter 13 debtors are rehabilitated, not reorganized).

While making reference to 11 U.S.C. § 362(d)(2), Movant offers no evidence of the value of the Property, any liens which may exist against the Property, or shows that there is no equity in the Property for the Debtor or the Bankruptcy Estate.

Based upon the evidence submitted to the court, the court determines that there is equity in the Property, and the Property is necessary for any effective rehabilitation in this Chapter 13 case. Relief is not granted pursuant to 11 U.S.C. § 362(d)(2).

11 U.S.C. § 362(d)(3)

The opening line to the Motion states that Movant is seeking relief pursuant to "11 U.S.C. § 362(d)(1) through (3)." While citing to the statutory provisions of 11 U.S.C. § 362(d)(1) and (d)(2), the Motion makes no further reference to § 362(d)(3).

Relief pursuant to 11 U.S.C. § 362(d)(3) is entirely unwarranted in this case as that section of the code applies only in single asset real estate cases. The case here is not a single asset real estate case. *See* 11 U.S.C. § 101(51B) (defining a single asset real estate case). Relief is not granted pursuant to 11 U.S.C. § 362(d)(3).

The court will presume that the reference to 11 U.S.C. § 362(d)(3) is a clerical error and not an intentional misstatement of the law.

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.

Continuance of September 10, 2024 Hearing

At the September 10, 2024 hearing, the Debtor stated opposition grounds, which included asserted offsets for expenses incurred by Debtor in addressing work on the property, including addressing mold issues, which Movant failed to address. Additionally, the Debtor has now set for hearing a Motion to Confirm a Modified Plan.

The hearing on the Motion for Relief from the Automatic Stay is continued to 2:00 p.m. on October 22, 2024, to be conducted in conjunction with the hearing on Motion to Confirm Debtor's Chapter 13 Plan. Opposition pleadings shall be filed and served on or before October 4, 2024, and Reply pleadings, if any, filed and served on or before October 14, 2024.

October 22, 2024 Hearing

The court continued the hearing on this Motion to be conducted in conjunction with the hearing on Motion to Confirm Debtor's Chapter 13 Plan. The court set the following deadlines in continuing this

hearing: "Opposition pleadings shall be filed and served on or before October 4, 2024, and Reply pleadings, if any, filed and served on or before October 14, 2024." Order, Docket 71.

On October 4, 2024, the parties filed a Stipulation where Movant agreed to withdraw this Motion at the hearing if Debtor's Plan is confirmed. The court has confirmed debtor's Plan by final ruling.

The Motion for Relief From the Automatic Stay is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Relief from the Automatic Stay filed by Lighthouse at Bridgeport Owners' Association ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Motion for Relief from the Automatic Stay is denied without prejudice.

19. 23-20751-E-13 MJD-3 | **FLYNN JEMERSON** Matthew DeCaminada | **MOTION TO MODIFY PLAN** 9-10-24 [62]

Final Ruling: No appearance at the October 22, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 10, 2024. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Flynn Earl Jemerson ("Debtor"), has filed evidence in support of confirmation. *See* Decl., Docket 64; Ex., Docket 65. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on October 8, 2024. Docket 73. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Name of Debtor ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on September 10, 2024, is confirmed. Debtor's Counsel shall

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

20. 24-24151-E-13 SLH-1 | **ERICK/DANIELLE HUTTON** | **Seth Hanson** | **MOTION TO VALUE COLLATERAL OF EXETER FINANCE LLC** | **9-19-24 [8]**

Final Ruling: No appearance at the October 22, 2024 hearing is required.

The Motion to Value is dismissed without prejudice.

Erick Hernan Hutton and Danielle Hutton ("Debtor") having filed an *Ex Parte* Motion to Dismiss the pending Motion on October 15, 2024, Dckt. 26; no prejudice to the responding party appearing by the dismissal of the Motion; Debtor having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by David Cusick ("the Chapter 13 Trustee"); the *Ex Parte* Motion is granted, Debtor's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value filed by Erick Hernan Hutton and Danielle Hutton ("Debtor") having been presented to the court, Debtor having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt.26, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Value is dismissed without prejudice.

21. 24-24158-E-13 MS-1 | **SCOTT JACKSON** **Mark Shmorgon** | **MOTION TO VALUE COLLATERAL OF HUGHES FEDERAL CREDIT UNION 9-18-24 [8]**

Final Ruling: No appearance at the October 22, 2024 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, other parties in interest, and Office of the United States Trustee on September 18, 2024. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Hughes Federal credit Union ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $24,917.

The Motion filed by Scott Jackson ("Debtor") to value the secured claim of Hughes Federal credit Union ("Creditor") is accompanied by Debtor's declaration. Declaration, Docket 10. Debtor is the owner of a 2021 Tesla Model Y Long Range Sport Utility 4D ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $24,917 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

David Cusick, the Chapter 13 Trustee, filed a statement of nonopposition on October 8, 2024. Docket 19.

DISCUSSION

The lien on the Vehicle's title secures a non-purchase-money loan incurred on August of 2022, to secure a debt owed to Creditor with a balance of approximately $58,941.17. Proof of Claim, No. 2-1. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured

claim is determined to be in the amount of $24,917, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Collateral and Secured Claim filed by Scott Jackson ("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 Hughes Federal credit Union ("Creditor") secured by an asset described as a 2021 Tesla Model Y Long Range Sport Utility 4D ("Vehicle") is determined to be a secured claim in the amount of $24,917, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $24,917 and is encumbered by a lien securing a claim that exceeds the value of the asset.

22. 24-22465-E-13 RPK-1 | **NESHELL FAISON** / **Ryan Keenan** | **MOTION TO CONFIRM PLAN** / **9-11-24 [27]**

Final Ruling: No appearance at the October 22, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on September 13, 2024. By the court's calculation, 39 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Neshell Faison ("Debtor") has provided evidence in support of confirmation. *See* Decl., Docket 29. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on October 8, 2024. Docket 32. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Neshell Faison ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on September 4, 2024, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed

order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

23. 19-24680-E-13 SAD-1 | **EDWARD/KIRSTEN VARNER** | **Scott Johnson** | **MOTION TO APPROVE LOAN MODIFICATION** | **9-20-24 [49]**

Final Ruling: No appearance at the October 22, 2024 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on September 20, 2024. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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

The Motion to Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by U.S. Bank National Association ("Creditor") moves the court for an order approving the loan modification between Creditor and Edward Allen Varner and Kirsten Elizabeth Varner ("Debtor"). The parties have agreed to a loan modification that will change Debtor's mortgage payment to $1,458.07 per month at a 4.375% interest rate, with a maturity date of February 1, 2064. The unpaid principal balance is $232,121.06.

The Motion is supported by the Declaration of Keyunna Joyner authenticating the facts allege din the Motion. Dckt. 52.

The Chapter 13 trustee, David Cusick, ("Trustee"), filed a nonopposition on October 8, 2024. Trustee states that the final payments have been made in this case, and the Plan appears completed. Docket 55.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Loan Modification filed by U.S. Bank National Association ("Creditor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and the court authorizes Edward Allen Varner and Kirsten Elizabeth Varner ("Debtor") to amend the terms of the loan with U.S. Bank National Association, which is secured by the real property commonly known as 5638 Miners Circle, Rocklin, CA 95764, on such terms as stated in the Modification Agreement filed as Exhibit 4 in support of the Motion (Dckt. 51).