

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein  
Bankruptcy Judge  
Sacramento, California

October 24, 2017 at 2:00 p.m.

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1.	<a href="#">16-27700</a> -C-13	MELISSA SMITH	MOTION TO CONFIRM PLAN
	<a href="#">TAG</a> -4	Aubrey Jacobsen	9-6-17 [ <a href="#">112</a> ]

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

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.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 6, 2017. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the 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). 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).

<b>The court's decision is to deny the Motion to Confirm the Plan.</b>
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The Trustee opposes confirmation on the basis that:

A. Debtor is delinquent in plan payments in the amount of \$4,740.00. Debtor has paid \$9,850.00 into the plan to date.

B. Debtor cannot make payments under the terms of the proposed plan. The payment has increased yet debtor has given no indication as to how the larger amount will be paid.

C. The plan is not the debtor's best effort. Documents reviewed by the Trustee show that debtor's spouse earns significantly more than she reports on Schedule I. Debtor has 9 children at or near college age and only 1 is

provided for with any potential college expenses.

D. Trustee objects to the "no look fee" for debtor's counsel because debtor and counsel have failed to efficiently and effectively prosecute the case. The case was converted from chapter 7 on March 15, 2017 and no plan has been confirmed.

E. In Class 1, debtor provides that the Trustee will pay Select Portfolio Services. This creditor has not filed a claim and the claims bar date has expired.

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

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

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

The Motion to Confirm the Chapter 13 Plan filed by the Debtor 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 Plan is denied and the proposed Chapter 13 Plan is not confirmed.

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Thru #5

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

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)(iii).**  
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Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on July 25, 2017. Fourteen days' notice is required.

The Objection to the 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). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

**The court's decision is xxxxxx**

The Creditor, HSBC Bank USA, N.A., opposes confirmation of the Plan on the basis that the plan fails to provide for a cure of Creditor's pre-petition claim in full. Debtor listed the pre-petition arrears at \$12,827.69 whereas Creditor's claim lists pre-petition arrears at \$16,615.42.

As funded, the Plan provides the following:

- A. 60 Plan Payments of \$2,980.00  
each.....\$178,800

B.	Chapter 13 Trustee Fees (Est. 7%).....	(\$ 12,516)
C.	Debtor's Counsel Fees.....	(\$2,500)
D.	Class 1 60 Current Mtg Payments \$2,423.29 each..	(\$145,397)
E.	Class 1 Arrearage Cure Payments.....	(\$16,651)
F.	5 and 7 Unsecured Claims.....	<u>(0.00% Dividend)</u>
	Net Surplus/(Insufficient) Funding.....	\$1,736

On its face, even with the higher arrearage amount it appears that Debtor has provided sufficient funds. However, that is premised on a Chapter 13 Trustee's fee of 7%. If it were to rise to 8%, the thin cushion is wiped out.

The hearing was continued to allow for discovery to be conducted in connection with the related motion to value secured claim.

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

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

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

**IT IS ORDERED** that Objection to confirmation of the Plan is xxxxxxxx.

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3. [17-24000](#)-C-13 LYNDIA STOVALL  
[CJO](#)-1 Peter Macaluso

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY  
SPECIALIZED LOAN SERVICING, LLC  
7-27-17 [[30](#)]

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

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)(iii).**

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Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on July 27, 2017. Fourteen days' notice is required.

The Objection to the 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). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

**The court's decision is to sustain the objection.**

The Creditor, PC Specialized Loan Servicing LLC. as servicer for the Bank of New York Mellon opposes confirmation of the Plan on the basis that the plan does not propose to cure the \$818.02 in pre-petition arrears owed to the Bank of New York Mellon. The plan proposes to pay Bank of New York Mellon \$0 because its interest in the collateral has a value of \$0.

However, debtor has not stated a basis for such valuation, nor has the debtor filed a Motion to Value Collateral.

The hearing was continued to allow for discovery to be conducted in connection with the related motion to value another secured claim. In light of the modest amount at issue, it appears that Debtor should be able to address this Objection through an amendment to the proposed plan.

Absent evidence that this objection has been addressed, the objection will be sustained.

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

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

The Objection to the Chapter 13 Plan filed by the 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 Objection to confirmation of the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

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4. [17-24000](#)-C-13 LYNDA STOVALL  
[DPC](#)-1 Peter Macaluso

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY DAVID  
P. CUSICK  
7-26-17 [[21](#)]

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

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)(iii).**

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Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on July 26, 2017. Fourteen days' notice is required.

The Objection to the 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). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

**The court's decision is to xxxxxxxxxxxxxx.**

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that:

A. Debtor is delinquent in play payments in the amount of \$2,980.00. Debtor has paid \$0 into the plan to date.

B. The plan relies upon a Motion to Value (see matter #7).

The hearing was continued to allow for discovery to be conducted in connection with the related motion to value secured claim.

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

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

The Objection to the Chapter 13 Plan filed by the

Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Objection to confirmation of the Plan is xxxxxxxx.

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**Tentative Ruling:** The Motion to Value has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on July 27, 2017. Twenty-eight days' notice is required. That requirement was met.

The Motion to Value has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The court's decision is to xxxxxxxxxxxxxxxxx.**

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 7544 Wynndel Way, Elk Grove, California. The Debtor seeks to value the property at a fair market value of \$313,000.00 as of the petition filing date. As the owner, the 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).

The first deed of trust secures a loan with a balance of approximately \$336,707.55. The Bank of New York Mellon's second deed of trust, serviced by Specialized Loan Servicing LLC, secures a loan with a balance of approximately \$41,533.22. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized.

Creditor, The Bank of New York Mellon, filed an opposition on August 25, 2017. The motion was made pursuant to Local Rule 9014-1(f)(1) which requires that opposition be made 14 days prior to the hearing date. As a

result, Creditor's opposition is late filed. Creditor's opposition states that the property exceeds debtor's valuation. The Creditor does not indicate an appropriate valuation, stating only that it is currently in the process of obtaining an appraisal. The opposition is late and contains no evidence.

The court continued the hearing to allow Creditor to obtain an appraisal, file it with the court and serve it on the Debtor by October 13, 2017, and address the issues with Debtor's counsel prior to a continued hearing. The court held that at the continued hearing, Debtor will advise the court whether, in light of the appraisal, further discovery is required or this matter may be set for an evidentiary hearing.

Creditor filed its supplemental opposition on October 13, 2017. Creditor included a declaration of Catherine Rogenmoser, a California Certified Real Estate Appraiser who completed a Residential Appraisal Report that concludes that the market value of the property is \$441,000.00.

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

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

The Motion for Valuation of Collateral filed by 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 xxxxx.

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**Final Ruling:** No appearance at the October 24, 2017 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Objection 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 13, 2017. 28 days' notice is required.

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

**The Objection to Discharge is sustained.**

Chapter 13 Trustee ("Objector"), filed the instant Objection to Debtor's Discharge on September 13, 2017. Dckt. 32.

The Objector argues that the Debtor is not entitled to a discharge in the instant bankruptcy case because the Debtor previously received a discharge in a Chapter 7 case.

The Debtor filed a Chapter 13 bankruptcy case on May 5, 2016 that was converted to Chapter 7 on April 25, 2017. Case No. 16-22958. The Debtor received a discharge on August 1, 2017.

The instant case was filed under Chapter 13 on August 2, 2017.

11 U.S.C. § 1328(f) provides that a court shall not grant a discharge if a debtor has received a discharge "in a case filed under chapter 7, 11, or 12 of this title during the 4-year period preceding the date of the order for relief under this chapter." 11 U.S.C. § 1328(f)(1).

Here, the Debtor received a discharge under 11 U.S.C. § 727 on December 30, 2015, which is less than four-years preceding the date of the filing of the instant case. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), the Debtor is not eligible for a discharge in the instant case.

Therefore, the objection is sustained. Upon successful completion of the instant case (Case No. 17-25113), the case shall be closed without the

entry of a discharge and Debtor shall receive no discharge in the instant case.

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

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

The Objection to Discharge filed by the Chapter 13 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 Objection to Discharge is sustained.

**IT IS ORDERED** that, upon successful completion of the instant case, Case No. 17-25113, the case shall be closed without the entry of a discharge.

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

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.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 23, 2017. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the 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). 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 court's decision is to deny the Motion to Confirm the Plan.**

The Trustee opposes confirmation on the basis that:

A. The amended plan does not appear to be properly signed by the debtor. The plan appears to have a total of 8 pages filed rather than 7 and page 8 appears to have been uploaded erroneously. Trustee requests that the attorney produce the originally signed document for review.

Trustee filed a status report on 9/26/17 indicating that the Trustee received the signature page of a plan numbered "Page 5 of 6." It does not appear to be the same plan filed August 23, 2017. The additional provision box is now marked as "are not" appended to the plan, thus removing the Trustee's ability to disburse attorneys fees. The plan also does not contain a monthly dividend, rather it refers to the additional provisions, but no additional provisions exist.

The court continued the hearing to allow debtor to fix the problems in the plan. The court has no evidence that this has occurred. The debtors filed a declaration on October 19, 2017. The Trustee's concerns regarding attorneys fees and the additional provisions went unheard. To the court's

knowledge, rather than supplying the Trustee with an appropriate signature page, the debtors have merely provided a declaration that states that they had signed the petition.

The debtors attempt to blame a late response on the Trustee's filing of a "response" which "presupposes that there is prior opposition by the other party." This is not true. Furthermore, if it was true, it would not be a valid excuse for filing a late reply. The court assumes that the "reply" the debtors are referencing is this October 19, 2017 declaration. The Trustee filed a response on September 7, 2017. A response can be filed in response to a motion. There does not need to be "prior opposition by the other party" for a response to be warranted. Furthermore, on September 26, 2017, the Trustee filed a status report. The problems outlined in that status report still exist. The debtor had at least 23 days from the date of the status report filing to craft a reply. The declaration is slightly longer than one (1) page.

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

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

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

The Motion to Confirm the Chapter 13 Plan filed by the Debtor 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 Plan is denied and the proposed Chapter 13 Plan is not confirmed.

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8.     [17-20142](#)-C-13   ASHOK/ARCHANA BACHHAR                   MOTION TO CONFIRM PLAN  
       [RLC](#)-2             Stephen Reynolds                   9-5-17 [[48](#)]  
DEBTOR DISMISSED:  
09/12/2017  
JOINT DEBTOR DISMISSED:  
09/12/2017

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**Final Ruling:** No appearance at the October 24, 2017 hearing is required.

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The Chapter 13 case having been dismissed pursuant to court order on  
September 12, 2017, **the Motion to Confirm Plan is dismissed as moot, and the  
matter is removed from the calendar.**

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**Final Ruling:** No appearance at the October 24, 2017 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 12, 2017. Forty-two days' notice is required. That requirement was met.

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

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

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on September 12, 2017 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved,



the Chapter 13 Trustee will submit the  
proposed order to the court.

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**Final Ruling:** No appearance at the October 24, 2017 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 15, 2017. 35 days' notice is required. That requirement was met.

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

**The Motion to Confirm the Modified Plan is granted.**

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

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

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

The Motion to Confirm the Chapter 13  
Plan filed by the Debtors having been presented to  
the court, and upon review of the pleadings,  
evidence, arguments of counsel, and good cause  
appearing,

**IT IS ORDERED** that the Motion is  
granted, Debtors' Chapter 13 Plan filed on  
September 15, 2017 is confirmed, and counsel for  
the Debtors shall prepare an appropriate order  
confirming the Chapter 13 Plan, transmit the  
proposed order to the Chapter 13 Trustee for

approval as to form, and if so approved, the  
Chapter 13 Trustee will submit the proposed order  
to the court.

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11. [14-25755](#)-C-13 LANI CORPUZ  
[CA-1](#) Michael Croddy

MOTION FOR COMPENSATION BY THE  
LAW OFFICE OF CRODDY AND  
ASSOCIATES, PC FOR MICHAEL D.  
CRODDY, DEBTOR'S ATTORNEY(S)  
9-29-17 [[21](#)]

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

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)(iii).**  
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Local Rule 9014-1(f)(2) Motion.

Correct 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 29, 2017. 21 days' notice is required. (Fed. R. Bankr. P. 2002(a)(6), 21 day notice requirement.) That requirement is met.

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

<b>The Motion for Allowance of Professional Fees is denied.</b>
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Michael Croddy, the Attorney for Debtor, ("Applicant") for Lani Corpuz, ("Client"), makes an Additional Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period August 7, 2013 through October 24, 2017. Applicant requests approval in total of \$5,662.50 in fees and \$281.00 in costs. After application of the \$875.00 retainer and \$210 paid to counsel for the filing fee, a total of **\$4,787.50** in additional compensation is requested.

#### **STATUTORY BASIS FOR PROFESSIONAL FEES**

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including-

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or

(ii) services that were not--

(I) reasonably likely to benefit the debtor's estate;

(II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

### **Benefit to the Estate**

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided as the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

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

*Id.* at 959.

In this District the Local Rules provide consumer counsel in Chapter 13 cases with an election for the allowance of fees in connection with the services required in obtaining confirmation of a plan and the services related thereto through the debtor obtaining a discharge. Local Bankruptcy Rule 2016-1 provides, in pertinent part,

"(a) Compensation. Compensation paid to attorneys for the representation of chapter 13 debtors shall be determined according to Subpart (c) of this Local Bankruptcy Rule, unless a party-in-interest objects or the attorney opts out of Subpart (c). The failure of an attorney to file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys, shall signify that the attorney has opted out of Subpart (c). When there is an objection or when an attorney opts out, compensation shall be determined in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and any other applicable authority."

...

(c) Fixed Fees Approved in Connection with Plan Confirmation. The Court will, as part of the chapter 13 plan confirmation process, approve fees of attorneys representing chapter 13 debtors provided they comply with the requirements to this Subpart.

(1) The maximum fee that may be charged is \$4,000.00 in nonbusiness cases, and \$6,000.00 in business cases.

(2) The attorney for the chapter 13 debtor must file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys.

(3) If the fee under this Subpart is not sufficient to fully and fairly compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees. The fee permitted under this Subpart, however, is not a retainer that, once exhausted, automatically justifies a motion for additional fees. Generally, this fee will fairly compensate the debtor's attorney for all preconfirmation services and most postconfirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims filed. Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation. Form EDC 3-095, Application and

Declaration RE: Additional Fees and Expenses in Chapter 13 Cases, may be used when seeking additional fees. The necessity for a hearing on the application shall be governed by Fed. R. Bankr. P. 2002(a)(6)."

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed \$3,500.00 in attorneys fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Applicant prepared the order confirming the Plan.

If Applicant believes that there has been substantial and unanticipated legal services which have been provided, then such additional fees may be requested as provided in Local Bankruptcy Rule 2016-1(c)(3). He 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. In the Ninth Circuit, the customary method for determining the reasonableness of a professional's fees is the "lodestar" calculation. *Morales v. City of San Rafael*, 96 F.3d 359, 363 (9th Cir. 1996), *amended*, 108 F.3d 981 (9th Cir. 1997). "The 'lodestar' is calculated by multiplying the number of hours the prevailing party reasonably expended on the litigation by a reasonable hourly rate." *Morales*, 96 F.3d at 363 (citation omitted). "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 County Bd. of Educ.*, 827 F.2d 617, 620 n.4 (9th Cir. 1987). Therefore, the court has considerable discretion in determining the reasonableness of 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.

## **FEES AND COSTS & EXPENSES REQUESTED**

### **Fees and Costs**

Applicant does not list any work done in the motion. Instead, applicant directs the court's attention to Exhibit C which is a Report of Time and Expenses. All of the work appears to be related to the filing of the petition, the mailing of the 341 meeting notice, and the filing of this motion. The court also notes the .3 hours expended for "ANTICIPATED Scanned and eFiled Motion for Attorney Fees" as well as an additional .3 hours for "ANTICIPATED Mailed Motion for Attorney Fees."

The Chapter 13 Trustee responded to the motion indicating that under the terms of the confirmed plan, the debtor's plan payments total \$10,620.00. To date, the debtor has paid \$7,080.00 into the plan and the Trustee has disbursed the same. As a result, \$3,540.00 is remaining to be paid into the plan. This amount is not sufficient to pay the attorneys fees requested in this motion.

The court will deny the motion for allowance of fees 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 Allowance of Fees and Expenses filed by Michael Croddy ("Applicant"), Attorney for the Chapter 13 Debtor is denied without prejudice.

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

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.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 7, 2017. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the 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). 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 court's decision is to deny the Motion to Confirm Modified Plan.**

The Trustee opposes confirmation on the basis that:

A. Debtor is proposing to change the treatment of the mortgage being paid by the Trustee to being paid by the debtor based on a pending trial loan modification. However, the mortgage is not provided for after the trial loan modification ends before a permanent loan modification begins or is denied, so the Trustee is not certain that the plan complies with applicable law.

B. Debtor lost his job in January of this year. He disclosed that he received a severance package and has \$7,000 remaining. Debtor does not disclose the amount of the severance package or how the monies have been spent. Schedule I discloses the debtor is receiving unemployment in the amount of \$1,950 per month. Debtor states in his declaration that he will have another job by March 2018 and will increase the plan payments but has not described any efforts to find employment. Additionally, debtor's amended Schedule J discloses his wife's car payment in the amount of \$600.

**Debtor's Response**

Debtor responds that the additional provisions attempted to make clear that the debtor would make adequate protection payments to Select Portfolio Servicing, Inc. in the amount of \$2,252.03, and there is no objection from the debtor to inclusion of language clarifying that the adequate protection payments continue past the October 1, 2017 date and are ongoing through the life of the plan. Debtor also has stated that he has a job and will step up plan payments in January 2018 rather than March 2018.

Debtor claims to have already received a job and filed schedules indicating that the debtor has \$1,350 in net income. This is a 0% plan, but the debtor is requesting to not pledge all of his disposable income towards the plan until January 2018 and instead make plan payments in the amount of \$600 until that time.

### **Trustee's Supplemental Opposition**

Trustee filed a supplemental opposition indicating that while at the hearing, the court stated that the matter was continued for the Trustee to address the purchase of a vehicle by Debtor's spouse, the minutes did not reflect this limitation.

Trustee objects to the modified plan on the basis that it was not proposed in good faith, as evidence by the debtor seeking to obtain a modified plan without revealing the terms of the car purchased by his spouse. Trustee also objects based on the fact that the debtor did not reveal the details of his severance.

Finally, Trustee objects because the debtor has stated that he plans to increase plan payments in January 2018 due to receiving a new job. However, the debtor has a new job already, and the Trustee does not see any reason why the debtor cannot make increased plan payments starting September or October 2017.

### **Debtor's Supplemental Reply**

Debtor points out that the court limited the issues for further opposition to the purchase of a vehicle by debtor's spouse. Debtor asserts that on September 27, 2017 the Debtor's Wife's auto purchase contract was emailed to the Trustee. The debtor both admonishes the Trustee for having this document when it filed its supplemental opposition, and apologizes for having delivered the document so late (36 hours before an opposition was due).

Debtor asserts that he need not disclose the severance package as FRBP 1007(h) does not apply as the severance package was not available until more than 180 days after the filing of the petition. Debtor asserts that the trustee can issue a formal § 521(f) demand for documents if it wishes.

The court notes that the car payment appears to be \$540.94 rather than \$600.00 as stated in Schedule J. The debtor has not adequately explained why he can only make payments of \$600 until January 2018 where he apparently has funds available from the severance package and has already secured employment. Debtor's amended schedules, which appear to be at least slightly under estimating debtor's disposable income, show \$1,350.00 monthly net income.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the Debtor 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 Modified Chapter 13 Plan is denied.

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**Tentative Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Here, as notice is improper, no opposition is required prior to the hearing.

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.**

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

Correct Notice NOT Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 22, 2017. Forty-two days' notice is required. That requirement was NOT met.

The Motion to Confirm the Plan has been IMPROPERLY 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). 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 court's decision is to deny the Motion to Confirm the Plan.**

The Trustee opposes confirmation on the basis that:

A. Debtors did not give sufficient notice for the motion. The motion was filed on September 22, 2017 giving only 33 days of notice.

B. Debtors are \$953.34 delinquent in plan payments to the Trustee. Debtors have paid \$1,906.68 into the plan to date.

C. Plan does not appear to be feasible. The plan states that the plan term shall be 36 months. However, the Trustee calculates that it will take 60 months to pay the priority IRS debt and 9.58% to general unsecured creditors.

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

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

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

The Motion to Confirm the Chapter 13 Plan filed by the Debtor 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 Plan is denied and the proposed Chapter 13 Plan is not confirmed.

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14. [17-25275](#)-C-13 MANUEL QUARESMA  
[DPC](#)-2 Michael Croddy

OBJECTION TO DEBTOR'S CLAIM OF  
EXEMPTIONS  
9-13-17 [[16](#)]

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**Final Ruling:** No appearance at the October 24, 2017 hearing is required.  
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**Local Rule 9014-1(f) (1)** - No opposition filed: The Objection to Debtor's Claim of Exemption has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f) (1) (ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on September 13, 2017. Twenty eight days' notice is required. That requirement is met.

**The court's decision is to sustain the Objection.**

Chapter 13 Trustee opposes Debtor's exemptions the basis that:

A. Debtor has exempted equity in his real property located at 7996 and 7998 Green Valley Drive, Sacramento, California in the amount of \$75,000 pursuant to C.C.P. § 704.950 which is for a declared homestead. Debtor has failed to provide the trustee with a Declared Homestead, and therefore is not entitled to this exemption.

The debtor filed no response to the motion. There is no evidence that a Declared Homestead has been provided to the Trustee.

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

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

The Objection to Exemptions filed by the Chapter 13 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 Objection to Exemptions is sustained.

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15. [12-41786](#)-C-13 JAMES LANINI  
[DPC](#)-6 Scott Hughes

OBJECTION TO CLAIM OF TWO JINN,  
INC. DBA ALADDIN BAIL BONDS,  
CLAIM NUMBER 10-1  
8-25-17 [[209](#)]

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**Final Ruling: No appearance at the October 24, 2017 hearing is required.**  
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Local Rule 3007-1 Objection to Claim - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on August 25, 2017. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b) (1) 14-day opposition filing requirement.) That requirement was met.

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b) (1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(b) (1) (A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Objection to Proof of Claim Number 10-1 of Two Jinn, Inc. dba Aladdin Bail Bonds is sustained and the claim is disallowed in its entirety.**

Chapter 13 Trustee requests that the court disallow the claim of Two Jinn, Inc. dba Aladdin Bail Bonds, Proof of Claim No. 10-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$480. Objector asserts that the claim was filed on August 21, 2017 where the bar date for non-governmental units to file claims was April 24, 2013.

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 factual basis 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).

Based on the evidence before the court, the creditor's claim is disallowed in its entirety. The Objection to the Proof of Claim is

sustained.

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

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

The Objection to Claim filed in this case by the Chapter 13 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 Proof of Claim Number 10-1 of Two Jinn, Inc. dba Aladdin Bail Bonds is sustained and the claim is disallowed in its entirety.

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

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)(iii).**  
-----

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on September 27, 2017. Fourteen days' notice is required.

The Objection to the 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). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

**The court's decision is to sustain the Objection.**

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor failed to appear at the first meeting of creditors. The continued meeting of creditors is scheduled for November 16, 2017.
- B. Debtor is \$150 delinquent in plan payments. Debtor has paid \$0 into the plan to date.
- C. Debtor appears to have net disposable income. The plan does not appear to be feasible.
- D. Debtor proposes a plan length of only 24 months.
- E. Debtor's plan proposes \$150 per month, however debtor lists ongoing payments to Consumer Portfolio Services in Class 1 in the amount of \$350.01.

F. Consumer Portfolio Services' claim should be provided for in Class 2b as there are no dividends toward to the arrearage being made.

G. Debtor appears to have non-exempt equity totaling \$6,500 but debtor proposes to pay \$0 to unsecured creditors.

H. Debtor failed to report on prior filings.

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 a minute order substantially in the following form holding that:

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

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

**IT IS ORDERED** that Objection to confirmation of the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

\*\*\*\*\*

17. [14-20893](#)-C-13 HUGH/CYNTHIA HEALD  
[CA-1](#) Michael Croddy

MOTION FOR COMPENSATION BY THE  
LAW OFFICE OF CRODDY AND  
ASSOCIATES, PC FOR MICHAEL D.  
CRODDY, DEBTORS' ATTORNEY(S)  
9-29-17 [[20](#)]

\*\*\*\*\*

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

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)(iii).**  
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Local Rule 9014-1(f)(2) Motion.

Correct 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 29, 2017. 21 days' notice is required. (Fed. R. Bankr. P. 2002(a)(6), 21 day notice requirement.) That requirement is met.

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

<b>The Motion for Allowance of Professional Fees is denied.</b>
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Michael Croddy, the Attorney for Debtor, ("Applicant") for Hugh and Cynthia Heald, ("Clients"), makes an Additional Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period June 26, 2013 through October 24, 2017. Applicant requests approval in total of \$6,825.00 in fees and \$281.00 in costs. After application of the \$3,500.00 retainer and \$281 paid to counsel for the filing fee, a total of **\$3,325.00** in additional compensation is requested.

**STATUTORY BASIS FOR PROFESSIONAL FEES**

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including-

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or

(ii) services that were not--

(I) reasonably likely to benefit the debtor's estate;

(II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

### **Benefit to the Estate**

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided as the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to

consider:

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

*Id.* at 959.

In this District the Local Rules provide consumer counsel in Chapter 13 cases with an election for the allowance of fees in connection with the services required in obtaining confirmation of a plan and the services related thereto through the debtor obtaining a discharge. Local Bankruptcy Rule 2016-1 provides, in pertinent part,

"(a) Compensation. Compensation paid to attorneys for the representation of chapter 13 debtors shall be determined according to Subpart (c) of this Local Bankruptcy Rule, unless a party-in-interest objects or the attorney opts out of Subpart (c). The failure of an attorney to file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys, shall signify that the attorney has opted out of Subpart (c). When there is an objection or when an attorney opts out, compensation shall be determined in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and any other applicable authority."

...

(c) Fixed Fees Approved in Connection with Plan Confirmation. The Court will, as part of the chapter 13 plan confirmation process, approve fees of attorneys representing chapter 13 debtors provided they comply with the requirements to this Subpart.

(1) The maximum fee that may be charged is \$4,000.00 in nonbusiness cases, and \$6,000.00 in business cases.

(2) The attorney for the chapter 13 debtor must file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys.

(3) If the fee under this Subpart is not sufficient to fully and fairly compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees. The fee permitted under this Subpart, however, is not a retainer that, once exhausted, automatically justifies a motion for additional fees. Generally, this fee will fairly compensate the debtor's attorney for all preconfirmation services and most postconfirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims filed. Only in instances where substantial and unanticipated

post-confirmation work is necessary should counsel request additional compensation. Form EDC 3-095, Application and Declaration RE: Additional Fees and Expenses in Chapter 13 Cases, may be used when seeking additional fees. The necessity for a hearing on the application shall be governed by Fed. R. Bankr. P. 2002(a)(6)."

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed \$3,500.00 in attorneys fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Applicant prepared the order confirming the Plan.

If Applicant believes that there has been substantial and unanticipated legal services which have been provided, then such additional fees may be requested as provided in Local Bankruptcy Rule 2016-1(c)(3). He 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. In the Ninth Circuit, the customary method for determining the reasonableness of a professional's fees is the "lodestar" calculation. *Morales v. City of San Rafael*, 96 F.3d 359, 363 (9th Cir. 1996), *amended*, 108 F.3d 981 (9th Cir. 1997). "The 'lodestar' is calculated by multiplying the number of hours the prevailing party reasonably expended on the litigation by a reasonable hourly rate." *Morales*, 96 F.3d at 363 (citation omitted). "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 loadstar 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 County Bd. of Educ.*, 827 F.2d 617, 620 n.4 (9th Cir. 1987). Therefore, the court has considerable discretion in determining the reasonableness of 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.

## **FEES AND COSTS & EXPENSES REQUESTED**

### **Fees and Costs**

Applicant does not list any work done in the motion. Instead, applicant directs the court's attention to Exhibit C which is a Report of Time and Expenses. All of the work appears to be related to the filing of the petition, the mailing of the 341 meeting notice, and the filing of this motion. There does not appear to be any complex issues in this case.

The Chapter 13 Trustee responded to the motion pointing out that it appears that some of the tasks listed in the motion are mostly clerical and/or duplicative. There does not appear to be anything unusual about this case as nearly all of the attorney hours spent were on preparing the petition or clerical matters.

The court will deny the motion for allowance of fees 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 Allowance of Fees and Expenses filed by Michael Croddy ("Applicant"), Attorney for the Chapter 13 Debtor is denied without prejudice.

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

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)(iii).**  
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Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on September 27, 2017. Fourteen days' notice is required.

The Objection to the 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). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

**The court's decision is to sustain the Objection.**

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that:

A. Debtors failed to attend the first meeting of creditors held on September 21, 2017.

B. Debtor is attempting to modify a debt secured solely by the Debtors' primary residence which is not allowed under § 1322(b).

C. Debtors are \$2,880.00 delinquent in plan payments to date. Debtors have paid \$0 into the plan to date.

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 a minute order substantially in the following form holding that:



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

The Objection to the Chapter 13 Plan filed by the 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 Objection to confirmation of the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

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