

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Sacramento, California

November 7, 2023 at 2:00 p.m.

1. **15-20002-E-13**
FF-13

BRIAN SANCHEZ
Gary Fraley

**CONTINUED MOTION FOR
EXAMINATION AND FOR PRODUCTION
OF DOCUMENTS
6-16-23 [[217](#)]**

The Motion for Examination and for Production of Documents is **XXXXXX.**

The Order to Appear and Examination of Judgment Debtor Ahmed Mami was issued on June 20, 2023. The court issued the Order based on Debtor Brian Sanchez's *ex parte* application for Judgment Debtor Ahmed Mami to appear and furnish information to aid in enforcement of two money judgments entered on October 5, 2022 and January 26, 2023. Additionally, Debtor Sanchez requests Judgment Debtor Mami produce documents identified in Exhibit B, Dckt. 218.

August 8, 2023 Hearing

At the hearing, counsel for the Judgment Creditor reported that they had been unable to serve the order for examination and requested that the hearing be continued and seek to locate the Judgment Debtor.

November 7, 2023 Hearing

At the hearing, **XXXXXXXXXXXX**

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 Order to Appear and Examination of 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 Examination of Judgment Debtor Ahmed Mami is **XXXXX**.

2. [23-23608](#)-E-13 **TEMA ROBINSON** **MOTION TO EXTEND AUTOMATIC STAY**
[PGM-1](#) **Peter Macaluso** 10-23-23 [\[14\]](#)

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, and Office of the United States Trustee on October 23, 2023. By the court’s calculation, 15 days’ notice was provided. 14 days’ notice is required.

The Motion to Extend 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, -----

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The Motion to Extend the Automatic Stay is granted.
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Tema Robinson (“Debtor”) seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor’s second bankruptcy petition pending in the past year. Debtor’s prior bankruptcy case (No. 21-21656) was dismissed on October 5, 2023, after Debtor was unable to cure her mortgage arrears. *See* Order, Bankr. E.D. Cal. No. 21-21656, Dckt. 153, October 4, 2023. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the current filing contains a confirmable Plan proposed on October 23, 2023. Motion, Dckt. 14. Debtor states she takes home a net income of \$6,089.76, giving her breathing room to fund a Plan. Debtor informs the court she needs

protection with the stay to get back her repossessed car and make sure she keeps her home so she can care for her autistic grandchild and elderly mother. Declaration, Dckt. 16.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). As this court has noted in other cases, Congress expressly provides in 11 U.S.C. § 362(c)(3)(A) that the automatic stay **terminates as to Debtor**, and nothing more. In 11 U.S.C. § 362(c)(4), Congress expressly provides that the automatic stay **never goes into effect in the bankruptcy case** when the conditions of that section are met. Congress clearly knows the difference between a debtor, the bankruptcy estate (for which there are separate express provisions under 11 U.S.C. § 362(a) to protect property of the bankruptcy estate) and the bankruptcy case. While terminated as to Debtor, the plain language of 11 U.S.C. § 362(c)(3) is limited to the automatic stay as to only Debtor. The subsequently filed case is presumed to be filed in bad faith if one or more of Debtor's cases was pending within the year preceding filing of the instant case. *Id.* § 362(c)(3)(C)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209–10 (2008). An important indicator of good faith is a realistic prospect of success in the second case, contrary to the failure of the first case. *See, e.g., In re Jackola*, No. 11-01278, 2011 Bankr. LEXIS 2443, at *6 (Bankr. D. Haw. June 22, 2011) (citing *In re Elliott-Cook*, 357 B.R. 811, 815–16 (Bankr. N.D. Cal. 2006)). Courts consider many factors—including those used to determine good faith under §§ 1307(c) and 1325(a)—but the two basic issues to determine good faith under § 362(c)(3) are:

- A. Why was the previous plan filed?
- B. What has changed so that the present plan is likely to succeed?

In re Elliot-Cook, 357 B.R. at 814–15.

Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay. Debtor has informed the court why her previous case was dismissed and how this new case will be different. Specifically, Debtor informs the court she has taken up a new career with more stable hours, she is renting out a room in her home, and she receives social security income for her grandchild. Declaration, Dckt. 16. Debtor has also submitted Schedules I and J on October 30, 2023, as well as a statement of current monthly income, informing the court of Debtor's new financial situation. Dckt. 22.

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 Extend the Automatic Stay filed by Tema 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 to extend the automatic stay, which terminates only as to Debtor pursuant to 11 U.S.C. § 362(c)(3)(A) thirty days after the commencement of this case, is granted. No determination is made by the court to the other provisions of 11 U.S.C. § 362(a) that apply to property of the bankruptcy estate.

3. [21-20917-E-13](#) **LORAIN DIXON** **MOTION TO SELL**
[PGM-2](#) **Peter Macaluso** **10-10-23 [111]**

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 Chapter 13 Trustee, creditors that have filed claims, parties requesting special notice, and Office of the United States Trustee on October 10, 2023. By the court's calculation, 28 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

Though seven days short of the required 35 days notice, the court notes that the proposed sale is in the best interest of the bankruptcy estate because it would allow the Debtor to complete her Chapter 13 Plan and pay a 100% dividend to her creditors. Motion, Dckt. 111. In light of the sale being in the best interest of the bankruptcy estate, the court shortens the notice period to the 28 days given. However, the court reminds Movant of the requirement for adequate notice as provided in Federal Bankruptcy Procedure 2002(a)(2) and Local Bankruptcy Rule 9014-1(f)(1).

The Motion to Sell Property 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 to Sell Property is granted.
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The Bankruptcy Code permits Loraine Dixon, the Chapter 13 Debtor, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the real property commonly known as 401 Dumas Court, Roseville, California 95787 ("Property").

The proposed purchaser of the Property is Patrick and Courtney Daniels, and the terms of the sale are:

- A. The purchase price will be \$760,000.00. Declaration, Dckt. 113.
- B. Proceeds from the sale will pay a 100% dividend to all creditors. Motion, Dckt. 111.
- C. Trustee must approve of the title company and escrow company to be used in the sale. *Id.*
- D. Disbursement may only be made in accordance with the approved closing statement. *Id.*
- E. Debtor's attorney requests \$3,000.00 in fees and requests that the Trustee include this sum, pending court approval, to the demand to title. *Id.*
- F. Broker commissions will total 4.5% to be split between the buyer and sellers' brokers/agents. *Id.*

TRUSTEE'S NON-OPPOSITION

Trustee filed a Non-Opposition with the court on October 24, 2023. Dckt. 116. Trustee states a sale of the Property will generate more than enough funds to pay all creditors in full.

DISCUSSION

At the time of the hearing, the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing, the following overbids were presented in open court: **xxxxxxxxxxxxxxxxxx**.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the sale would generate enough funds to pay off all creditors at a 100% dividend.

Movant has estimated that a 4.5 percent broker's commission from the sale of the Property will equal approximately \$34,200.00. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than 4.5 percent commission.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court to allow Trustee to issue a demand and immediately fund the Plan from the proceeds of this sale.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 6004(h), and this part of the requested relief 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 Sell Property filed by Loraine Dixon, (“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 Loraine Dixon, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Patrick and Courtney Daniels (“Buyer”), the Property commonly known as 401 Dumas Court, Roseville, California 95787 (“Property”), on the following terms:

- A. The Property shall be sold to Buyer for \$760,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit B, Dckt. 114, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.
- D. The Chapter 13 Debtor is authorized to execute any and all documents reasonably necessary to effectuate the sale.
- E. The Chapter 13 Debtor and Chapter 13 Trustee are authorized to pay a real estate broker’s commission in an amount not more than 4.5 percent of the actual purchase price upon consummation of the sale. The 4.5 percent commission shall be split evenly between the Chapter 13 Debtor’s and seller’s broker/agent.
- F. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtor. Within fourteen days of the close of escrow, the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 6004(h) is waived for cause.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 23, 2023. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

The Motion to Extend 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, -----
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<p>The Motion to Extend the Automatic Stay is granted.</p>

Michele Louise Davenport ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 18-25184) was dismissed on March 1, 2023, after Debtor failed to make plan payments. *See* Order, Bankr. E.D. Cal. No. 18-25184, Dckt. 172, July 18, 2023. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because there was a significant increase in her household utilities during the summer of 2022. Declaration, Dckt. 10. As the Debtor was approaching the end of her 60-month term plan, she was not able to modify her Plan and reach a feasible plan payment, so she decided to let her case be dismissed and try to modify her loan with the mortgage creditor. *Id.* The Debtor was unsuccessful in her attempt at modifying that loan, and the mortgage creditor proceeded to set a foreclosure sale. *Id.* This

threatened foreclosure led the Debtor to file this present case. Since the amount on the mortgage arrears has decreased compared to the prior case, the Debtor believes the Plan to be feasible. *Id.* The Plan payment is \$335 less than the Plan payment in the prior case, and the Debtor also had an increase in her income. Motion, Dckt. 8. The Debtor's prior monthly income was \$4,268.23. *See* Case No. 18-25184, Schedule I, Dckt. 112. The Debtor's current monthly income is \$4,541.97, a \$273 per month increase. Schedule I, Dckt. 1. The Debtor maintains that the case was filed in good faith in order to save her home. Declaration, Dckt. 26.

The proposed Chapter 13 Plan in this case provides for Debtor to make monthly plan payments of \$1,980.00 for sixty months, with a \$324.79 monthly cure payment made on the Class 1 secured claim for the remaining (\$19,486.85) arrearage. In the prior Bankruptcy Case, the Class 1 creditor stated in Amended Proof of Claim 2-2 that the prepetition arrearage as of the 2018 filing on that case was (\$13,494.79).

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). As this court has noted in other cases, Congress expressly provides in 11 U.S.C. § 362(c)(3)(A) that the automatic stay **terminates as to Debtor**, and nothing more. In 11 U.S.C. § 362(c)(4), Congress expressly provides that the automatic stay **never goes into effect in the bankruptcy case** when the conditions of that section are met. Congress clearly knows the difference between a debtor, the bankruptcy estate (for which there are separate express provisions under 11 U.S.C. § 362(a) to protect property of the bankruptcy estate) and the bankruptcy case. While terminated as to Debtor, the plain language of 11 U.S.C. § 362(c)(3) is limited to the automatic stay as to only Debtor. The subsequently filed case is presumed to be filed in bad faith if one or more of Debtor's cases was pending within the year preceding filing of the instant case. *Id.* § 362(c)(3)(C)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209–10 (2008). An important indicator of good faith is a realistic prospect of success in the second case, contrary to the failure of the first case. *See, e.g., In re Jackola*, No. 11-01278, 2011 Bankr. LEXIS 2443, at *6 (Bankr. D. Haw. June 22, 2011) (citing *In re Elliott-Cook*, 357 B.R. 811, 815–16 (Bankr. N.D. Cal. 2006)). Courts consider many factors—including those used to determine good faith under §§ 1307(c) and 1325(a)—but the two basic issues to determine good faith under § 362(c)(3) are:

- A. Why was the previous plan filed?
- B. What has changed so that the present plan is likely to succeed?

In re Elliot-Cook, 357 B.R. at 814–15.

Debtor has sufficiently demonstrated the case was filed in good faith under the facts of this case and the prior case for the court to extend the automatic stay.

The Motion is granted, and the automatic stay is extended for all purposes and parties, unless terminated by operation of law or further order of this 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 to Extend the Automatic Stay filed by Michele Louise Davenport (“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 the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

5.	<u>23-23625</u> -E-13	SAVANNAH WESTFALL	MOTION TO EXTEND AUTOMATIC
	<u>PGM</u> -1	Peter Macaluso	STAY
			10-24-23 [14]

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, and Office of the United States Trustee on October 24, 2024. By the court’s calculation, 14 days’ notice was provided. 14 days’ notice is required.

The Motion to Extend 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, -----
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The Motion to Extend the Automatic Stay is granted.
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Savannah Elizabeth Westfall (“Debtor”) seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor’s second bankruptcy petition pending in the past year. Debtor’s prior bankruptcy case (No. 23-22633) was dismissed on August 7, 2023, after Debtor failed to file the balance of schedules and Plan. *See* Order, Bankr. E.D. Cal. No. 23-22633, Dckt. 18, September 27, 2023. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because she experienced health issues that prevented her from completing the paperwork on time. Declaration, Dckt. 16. The Debtor is earning enough in wages to cover all her necessary obligations in addition to the proposed Chapter 13 Plan. Motion, Dckt. 14. The Debtor filed the instant case in order to stop a pending foreclosure of the Debtor’s principal residence. Declaration, Dckt. 16. The Debtor states that she indicated reasonable and necessary expenses of approximately \$1,617.85, allowing for a Plan payment of \$3,480.00. Schedule J, Dckt. 12.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). As this court has noted in other cases, Congress expressly provides in 11 U.S.C. § 362(c)(3)(A) that the automatic stay **terminates as to Debtor**, and nothing more. In 11 U.S.C. § 362(c)(4), Congress expressly provides that the automatic stay **never goes into effect in the bankruptcy case** when the conditions of that section are met. Congress clearly knows the difference between a debtor, the bankruptcy estate (for which there are separate express provisions under 11 U.S.C. § 362(a) to protect property of the bankruptcy estate) and the bankruptcy case. While terminated as to Debtor, the plain language of 11 U.S.C. § 362(c)(3) is limited to the automatic stay as to only Debtor. The subsequently filed case is presumed to be filed in bad faith if one or more of Debtor’s cases was pending within the year preceding filing of the instant case. *Id.* § 362(c)(3)(C)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209–10 (2008). An important indicator of good faith is a realistic prospect of success in the second case, contrary to the failure of the first case. *See, e.g., In re Jackola*, No. 11-01278, 2011 Bankr. LEXIS 2443, at *6 (Bankr. D. Haw. June 22, 2011) (citing *In re Elliott-Cook*, 357 B.R. 811, 815–16 (Bankr. N.D. Cal. 2006)). Courts consider many factors—including those used to determine good faith under §§ 1307(c) and 1325(a)—but the two basic issues to determine good faith under § 362(c)(3) are:

- A. Why was the previous plan filed?
- B. What has changed so that the present plan is likely to succeed?

In re Elliot-Cook, 357 B.R. at 814–15.

Debtor has sufficiently demonstrated the case was filed in good faith the facts of this case and the prior case for the court to extend the automatic stay.

~~The Motion is granted, and the automatic stay is extended for all purposes and parties, unless terminated by operation of law or further order of this 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 to Extend the Automatic Stay filed by Savannah Elizabeth Westfall (“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 the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.~~

6. <u>23-23047</u> -E-13 <u>DPC-1</u>	RONALD/SUSAN BUDER Julius Cherry	OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 10-11-23 [15]
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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 October 11, 2023. By the court’s calculation, 27 days’ notice was provided. 14 days’ notice is required.

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

The Objection to Confirmation of Plan is sustained.
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The Chapter 13 Trustee, David Cusick (“Trustee”), opposes confirmation of the Plan on the basis that:

1. Debtor cannot make the plan payments. Debtor has failed to make its payment, disclose information in the Statement of Financial Affairs and Schedules or Form 122C, and Debtors failed to provide business documents in a timely manner.
2. Debtor had its business truck stolen and did not disclose to the Trustee a GoFundMe distribution paid to reimburse for the theft.
3. Debtor has inaccurate or missing information in its Schedules.
4. Debtor failed to identify all businesses it is currently operating in its Statement of Financial Affairs.
5. Debtor has not cooperated with Trustee with Trustee’s investigation of Debtor’s businesses.
6. Debtor otherwise has failed to give an accurate reality of its financial situation, leading Trustee to believe Debtor may be above the median income level despite reporting it was below the median income level.

Dckt. 15.

DISCUSSION

Trustee’s objections are well-taken.

No Plan Payments Made / Failed to Commence Plan Payments

Debtor did not commence making plan payments and is delinquent in plan payments. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

Failure to File Documents Related to Business

Debtor has failed to timely provide Trustee with business documents including, including a statement for property or business income for each business. 11 U.S.C. §§ 521(e)(2)(A)(i), 704(a)(3), 1106(a)(3), 1302(b)(1), 1302(c); FED. R. BANKR. P. 4002(b)(2) & (3). Debtor is required to submit those documents and cooperate with Trustee. 11 U.S.C. § 521(a)(3). Without Debtor submitting all required documents, the court and Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Inaccurate / Missing Information

Debtor’s Schedules and other documents were not amended to correct inaccuracies despite Trustee requesting Debtor amend its filings at the meeting of the creditors. Moreover, Debtor appears to have intentionally withheld relevant information regarding its finances concerning the GoFundMe

distribution. Such omissions raise the concern that this Plan was not filed in good faith as required by 11 U.S.C. § 1325(a)(7).

At the hearing, **XXXXXXXXXX**

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.

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, and parties requesting special notice, on October 18, 2023. By the court's calculation, 20 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 -----.

<p>The Objection to Confirmation of Plan is sustained.</p>

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

1. The Plan calls for OneMain Financial's claim, estimated at \$14,189.00, to be valued as secured for \$6,100.00 in Class 2(B). Plan, Dckt. 4, ¶ 3.08. No motion to value has been filed to date and a claim was filed for \$15,405.56 with a secured value of \$15,050.00. POC 7-1. The Debtor, therefore, is not complying with their own Plan.
2. The Debtor has not provided a completed business questionnaire as requested. The Debtor only provided a 2022 federal tax return, a 6-month aggregate profit and loss statement, and only 3 months of bank statements. The Trustee normally requests 2 years of tax returns, 6 months of bank statements, and a completed questionnaire.

Motion, Dckt. 23.

DISCUSSION

Trustee's objections are well-taken.

Failure to Comply with the Plan

Debtor may not be able to comply with the Plan under 11 U.S.C. § 1325(a)(6). The Plan calls for OneMain Financial, estimated at \$14,189.00, to be valued as secured for \$6,100.00 in Class 2(B), requiring Debtor to file a Motion to Value. Plan, Dckt. 4. However, the Debtor has not initiated a Motion to Value, and OneMain Financial has valued its secured claim at \$15,050.00. POC 7-1. Debtor is not diligently prosecuting its own Plan by neglecting to comply with the Plan's provisions.

Failure to File Documents Related to Business

Debtor has failed to timely provide Trustee with business documents including:

- A. Questionnaire,
- B. Two years of tax returns,
- C. Six months of profit and loss statements,
- D. Six months of bank account statements, and
- E. Proof of license and insurance or written statement that no such documentation exists.

11 U.S.C. §§ 521(e)(2)(A)(i), 704(a)(3), 1106(a)(3), 1302(b)(1), 1302(c); FED. R. BANKR. P. 4002(b)(2) & (3). Debtor is required to submit those documents and cooperate with Trustee. 11 U.S.C. § 521(a)(3). Without Debtor submitting all required documents, the court and Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325.

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.

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, and parties requesting special notice on October 19, 2023. By the court's calculation, 19 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 -----.

<p>The Objection to Confirmation of Plan is sustained.</p>

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

- A. The Plan proposed by the Debtor is blank, except for the name of the Debtor, case number, and signature of the Debtor.
- B. The Debtor is not trying to make the bankruptcy work, so neither the Plan nor the petition appear to be filed in good faith.
- C. The Debtor failed to appear at the First Meeting of Creditors.
- D. The Debtor failed to provide the Trustee with any employer payment pay advices that were received 60 days prior to the filing of the petition.

- E. The Debtor has failed to provide the Trustee with a tax transcript or copy of her Federal Income Tax Return with attachments for the most recent pre-petition tax year. Alternatively, Debtor has failed to file a written statement that no such documentation exists.
- F. The Debtor filed documents with errors. Schedules A/B show many discrepancies regarding the value listed, versus the Debtor's value, or does not list a value at all. Schedule, Dckt. 10. Schedule E/F is blank and its is not clear to the Trustee if the Debtor has any priority or unsecured creditors. *Id.* In Schedule G, neither box was checked for Question #1. *Id.* In Schedule H, none of the boxes were checked and the Statement of Financial Affairs showed that the Debtor is married. *Id.* In Schedule I, the Debtor indicates that she, and a non-filing spouse, are both not employed although they both receive incomes. *Id.* Schedule J lists no rent or mortgage payment, but the Debtor pays real estate taxes of \$450.00 per month. *Id.* In the Statement of Affairs, the Debtor showed no income in 2020, 2021, or 2022, but Schedule I shows the Debtor's income is \$98,208.00. *Id.* Lastly, the Form 122C-1 document shows inconsistent median income for two people. Dckt. 11.
- G. The Debtor's prior history indicates they cannot make the case work. The Debtor has filed three prior Chapter 13 Bankruptcy cases since 2019, each dismissed. The Debtor has not explained why the aforementioned case will succeed when the previous have failed.

Motion, Dckt. 18.

DISCUSSION

Trustee's objections are well-taken.

Blank Plan

11 U.S.C. § 1325(a)(1) provides for confirmation of a plan if it complies with Chapter 13 provisions and other applicable Code provisions. Here, Debtor has proposed a plan that is woefully lacking in compliance with the Bankruptcy Code. Debtor has not proposed plan payments in the Plan. Debtor has not proposed any other terms in the Plan, including payments to Classes 1–6 or a dividend amount to Class 7. The Plan does not comply with 11 U.S.C. § 1325(a)(1).

Failure to Appear at 341 Meeting

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

Failure to Provide Pay Advices

Debtor has not provided Trustee with employer payment advices for the sixty-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv); FED. R. BANKR. P. 4002(b)(2)(A). Debtor has failed to provide all necessary pay stubs. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Failure to Provide Tax Returns

Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A)(i); FED. R. BANKR. P. 4002(b)(3). Debtor has failed to provide the tax transcript. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Discrepancy in Schedules

Trustee argues that the Plan is not feasible according to 11 U.S.C. § 1325(a)(3) and (7) because the Debtor's Schedules are incomplete and inconsistent. The Debtor indicates that she, and a non-filing spouse, are both not employed although they both receive incomes. Schedule I, Dckt. 10. Schedule J lists no rent or mortgage payment, but the Debtor indicates she pays real estate taxes. Schedule J, Dckt. 10. In the Statement of Affairs, the Debtor showed no income in the current or previous years, but Schedule I shows the Debtor's income is \$98,208.00. Dckt. 10.

Debtor's Schedules reflect an income from both her and the non-filing spouse, but do not correctly show on the petition where such income is from. Additionally, the Debtor claims no rent or mortgage payment, but expenses of \$450.00 a month on real estate taxes. Absent an explanation from the Debtor as to the discrepancies in the Schedules, the court does not believe that Debtor's Plan is in good faith. That is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(3).

Bad Faith: Prior Bankruptcy Cases

Debtor was required to report any bankruptcy cases filed within the prior eight years. Debtor reported that she had filed a previous bankruptcy case in the past eight years, but did not identify the case[s]. Petition, Dckt. 1.

Trustee reports that Debtor has filed bankruptcy three separate times and has failed to explain why the current case will succeed. The Trustee identified Case No. 19-23831, which was dismissed July 16, 2021 for failure to timely file documents. Trustee also identified Case. No. 21-23191 which was dismissed on October 8, 2021, once again for failure to timely file documents.

Lastly, and most recently, the Trustee identifies Case No. 22-20966 dismissed on August 26, 2022. This case was dismissed because the Debtor failed to appear at the First Meeting of Creditors, failed to file a Motion to Confirm Plan, filed an incomplete Plan, failed to disclose prior bankruptcies, failed to provide accurate or complete information on her Schedules, and failed to provide tax returns. *See* No. 22-20966 Order, Dckt. 21.

In reviewing the Docket, the court notes that the Debtor's previous bankruptcies have been dismissed for similar circumstances to this Objection to Confirmation of Plan. Absent an explanation from the Debtor as to why this Plan will succeed, the court does not believe that the Debtor's Plan is in good faith. That is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(3).

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

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.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee and Office of the United States Trustee on October 18, 2023. By the court’s calculation, 20 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 Name of Creditor (“Creditor”) is granted, and Creditor’s secured claim is determined to have a value of \$12,000.00.

The Motion filed by Melissa Tyars (“Debtor”) to value the secured claim of Exeter Finance LLC (“Creditor”) is accompanied by Debtor’s declaration. Declaration, Dckt. 22. Debtor is the owner of a 2018 Chevrolet Equinox (“Vehicle”). Debtor seeks to value the Vehicle at a replacement value of \$12,000.00 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).

DISCUSSION

The lien on the Vehicle’s title secures a purchase-money loan incurred on June 7, 2021 to secure a debt owed to Creditor with a balance of approximately \$16,486.98. Proof of Claim, No. 3-1. 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 \$12,000.00, 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 Melissa Tyars (“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 Exeter Finance LLC (“Creditor”) secured by an asset described as Chevrolet Equinox (“Vehicle”) is determined to be a secured claim in the amount of \$12,000.00, 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 \$12,000.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

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, and parties requesting special notice on October 18, 2023. By the court’s calculation, 20 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 -----.

<p>The Objection to Confirmation of Plan is sustained.</p>

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

- A. Romy Oster (“Debtor”) and Donald Oster (“Spouse”) filed a Waiver of Exemptions on August 7, 2023, waiving the normal California exemptions other than CCP §703.140(b). Waiver of Exemptions, Dckt. 8. However, Debtor claimed the same exemptions they waived when they filed their petition on September 5, 2023. Because the waiver was signed before the existence of this bankruptcy case, it may not be effective and Debtor must present testimony of Spouse disavowing the waiver. If the Debtor and Spouse do not disavow the waiver, the Trustee will need to object to the claimed exemptions. Additionally, the confirmation of the Plan with these exemptions may be contrary to 11 U.S.C. §1325(a)(1) and (3) without Spouse’s testimony.

- B. Debtor shows year-to-date income for an “AirBnB” on the Statement of Financial Affairs, Statement of Financial Affairs, Dckt. 1, p. 29, Question 5, but does not show this income on Schedule I. Dckt. 1, p. 25-26. Debtor also shows a single family home as real property with a separate listing for “Arrears.” Dckt. 1, p. 11-12, 1.1 and 1.2. Debtor only shows two (2) claims, both on their residence, although four (4) unsecured claims and a claim for the residence have been filed. The information is unreliable, and the Trustee cannot determine if Debtor can make the plan payments. 11 U.S.C. §1325(a)(6).
- C. Debtor’s attorney seeks a flat fee of \$2,000 in the Plan where \$2,000 has already been paid prior to filing. Trustee opposes the flat fee unless Debtor provides sufficient information to confirm the Plan.

Dckt. 21

Trustee submits the Declaration of Neil Ennmark, attorney for the Trustee, in support of this Objection. Declaration, Dckt. 23. Mr. Enmark testifies as to the veracity of the facts presented in the Objection.

A review of the Docket on November 2, 2023 reveals Debtor has not filed a Response to Trustee’s Objection. However, Debtor did submit Amended Schedules and Statement of Financial Affairs on October 31, 2023. Dckt. 26. At the hearing, **XXXXXXXXXXXXXX**

DISCUSSION

Trustee’s objections are well-taken.

Cannot Comply with the Plan / Insufficient Information

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The exemptions, initially waived, then claimed, cast doubt on the true intentions of Debtor and undermine the viability of the proposed Plan. Whether Debtor is intending to claim the exemptions or not is integral to the Plan, and this discrepancy prevents a full understanding of Debtor’s ability to comply with the Plan. Without an accurate picture of Debtor’s financial reality, the court cannot determine whether the Plan is confirmable.

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.

11. [23-23084-E-13](#)
[DPC-1](#)

JOHN ADAMS
Michael Hays

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
10-17-23 [\[19\]](#)

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, and parties requesting special on October 17, 2023. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.
--

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

- A. John Adams ("Debtor") may not have listed all creditors. Schedule E/F, Dckt. 14, p. 15, does not identify any creditors, and Debtor admitted at the First Meeting of Creditors on October 12, 2023, that he has not listed all the creditors of his non-filing spouse, Kelly Adams ("Spouse"). Because this case was filed on September 5, 2023, all non-governmental creditors have until November 14, 2023, and all governmental creditors have until March 4, 2024, to file a proof of claim. A review of the court's docket shows the Franchise Tax Board filed a proof of claim on October 2, 2023.

- B. Debtor's attorney is opting into the new fee schedule, but Debtor's attorney failed to file form EDC 3-096. Trustee cannot ascertain if Debtor agreed to the \$8,000.00 administrative fee Debtor's attorney has elected.
- C. Debtor admitted at the First Meeting of Creditors that he is unable to make the plan payments and will be filing an amended Plan that proposes the sale of real property.
- D. Claim 1 filed by the Franchise Tax Board shows Debtor did not file tax returns for 2021 and 2022.

Dckt. 19

Trustee submits the Declaration of his employee, Teryl Wegemer, in support of his Objection. Dec., Dckt. 21. Mr. Wegemer testifies that all creditors have not been listed, and no EDC 3-096 has been filed. *Id.*

DISCUSSION

Trustee's objections are well-taken.

Infeasible Plan

Trustee alleges that the Plan is not feasible. 11 U.S.C. § 1325(a)(6). First, Debtor admits he is unable to make the plan payments and intends on filing an amended Plan that proposes the sale of real property, which presumably will allow him to comply with the amended plan payments. Second, because Debtor has not filed form EDC 3-096, it is impossible to know whether Debtor agrees with the \$8,000.00 fee Debtor's attorney elected under the new fee schedule. Thus, the Plan may not be confirmed.

Failure to File Tax Returns

Claim 1 filed by the Franchise Tax Board indicates that Debtor's federal income tax return for the 2021 and 2022 tax year has not been filed still. Filing of the return is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Failure to Provide for a Priority Claim

Trustee asserts that the Franchise Tax Board has a claim for \$7,123.49 in priority unsecured debt and \$3,554.87 in general unsecured debt. Proof of Claim 1-1, filed on October 2, 2023. The Plan does not provide for all priority debt as required by 11 U.S.C. § 1322(a)(2).

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

The court shall 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.

12. [23-21488-E-13](#)
[BLG-3](#)

SHARMAINE MORZO
Chad Johnson

MOTION TO CONFIRM PLAN
9-19-23 [38]

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 that have filed claims, and Office of the United States Trustee on September 19, 2023. By the court’s calculation, 49 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

<p>The Motion to Confirm the Modified Plan is denied.</p>
--

The debtor, Sharmaine Morzo (“Debtor”) seeks confirmation of the Modified Plan because Debtor has now received a verbal offer for a higher paying job, which she accepted. Declaration, Dckt. 42. Unlike her previous Plan, Debtor has also added more realistic monthly expenses into her budget. *Id.* Debtor has already paid \$2,923.00 into the Plan. She testifies she will then pay \$2,000.00 in September 2023. The Modified Plan further provides for \$2,473.00 per month for months 5-60, and an 18.18 percent

dividend to unsecured claims totaling \$27,848.79. Modified Plan, Dckt. 39. 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 24, 2023. Dckt. 53. Trustee opposes confirmation of the Plan on the basis that:

1. Debtor is delinquent in plan payments. Debtor is \$1,674.00 delinquent in plan payments with the next payment due on October 25, 2023.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is \$1,674.00 delinquent in plan payments, which represents less than a month of the of the \$2,473.00 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). However, the court notes that Debtor has made substantial steps toward proposing a confirmable Plan.

At the hearing, **XXXXXXXXXX**

~~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, Sharmaine Morzo ("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.~~

FINAL RULINGS

13. [22-21314-E-13](#)
[DPC-5](#)

NADIA ZHIRY
Peter Macaluso

STATUS CONFERENCE RE: MOTION TO
DISMISS CASE
6-21-23 [[260](#)]

13 thru 16

Final Ruling: No appearance at the November 7, 2023 Hearing is required.

Debtor's Atty: Peter G. Macaluso

Notes:

Set by order of the court filed 8/25/23 [Dckt 313] for a status and scheduling conference.

The hearing on the Motion is continued to 2:00 p.m. on November 21, 2023.
--

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Nadia Zhiry ("Debtor") has failed to file a new plan.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on July 3, 2023. Dckt. 272. Debtor states an amended plan will be filed. Debtor awaits the discharge of the Receiver in a civil action in Superior Court. *Id.* Debtor then plans to file a motion for final payment to Debtor's contractor, which will allow for the increase in payments to satisfy the claims in the Chapter 13 case, specifically the non-dischargable claim of the City of Sacramento, California. *Id.*

Failure to Provide Evidence

Debtor's counsel filed an Opposition making several factual assertions. However, no declaration of the Debtor was filed to support those assertions or authenticate the exhibits provided. The court relies on properly authenticated, admissible evidence to establish facts in any proceeding—the court cannot and does not merely take counsel at their word. Apart from the practical effect that the court has been given a request for relief without any established factual basis, the Local Rules also affirmatively require that evidence be filed along with every motion and request for relief. LOCAL BANKR. R. 9014-1(d)(3)(D). Failure to comply with the Local Rules is grounds for an appropriate sanction. LOCAL BANKR. R. 1001-1(g).

FILING OF SECOND AMENDED PLAN

Debtor filed a Second Amended Plan and Motion to Confirm on July 12, 2023. Dckts. 285, 289. The court has reviewed the Motion to Confirm the Second Amended Plan and the Declaration in support filed by Debtor. Dckts. 287, 289. The Motion appears to comply with Federal Rule of Bankruptcy Procedure

9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor's personal knowledge. FED. R. EVID. 601, 602.

The Court continues the hearing on the Motion to Dismiss for consideration in conjunction with Debtor's Motion to Confirm the proposed Second Amended Plan in this Bankruptcy Case.

August 22, 2023 Hearing

At the hearing, the Parties agreed to continue the hearing to allow the Debtor and Receiver to prosecute the Motion for discharge of the Receiver and determination of the Receiver's fees and expenses, the hearing for which is set for October 31, 2023, in the State Court.

NOVEMBER 7, 2023 STATUS CONFERENCE

On October 31, 2023, the State Court Receiver notified the court that the hearings in the State Court receivership have been continued to November 8, 2023. The court has been continuing the hearings in this Motion, Motion to Excuse Turnover, Objection to Proof of Claim, and Motion to Confirm the Second Amended Plan until sufficiently after the State Court scheduled proceeding.

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 hearing on the Motion to Dismiss this Chapter 13 Case filed by David Cusick, the Chapter 13 Trustee, having been presented to the court, the court being notified that the hearings in the State Court Receivership Action having been continued to November 8, 2023, and upon review of the pleadings, and good cause appearing,

IT IS ORDERED that the hearing on the Motion is continued to **2:00 p.m. on November 21, 2023.**

14. [22-21314-E-13](#)
[KSR-1](#)

NADIA ZHIRY
Peter Macaluso

CONTINUED STATUS CONFERENCE RE:
MOTION TO EXCUSE TURNOVER
AND/OR MOTION TO CONFIRM
TERMINATION OR ABSENCE OF STAY
5-31-22 [\[12\]](#)

Final Ruling: No appearance at the November 7, 2023 Hearing is required.

Debtor's Atty: Peter G. Macaluso

Notes:

Continued from 8/22/23. The Parties stating that the Motion for discharge of the Receiver and determination of the Receiver's Fees and Expenses will not be conducted until 10/31/23.

<p>The hearing on the Motion to Excuse Turnover is continued to 2:00 p.m. on November 21, 2023.</p>
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JULY 11, 2023 CONTINUED STATUS CONFERENCE

On June 27, 2023, Nadia Zhiry, the Debtor, filed an updated Status Report (Dckt. 267). The court summarizes the updated Status Report as follows:

A. Debtor has completed all of the repairs and abatements on the Property and has received final approval for all such repairs and abatements from the City.

B. Debtor has moved to discharge the Receiver and conclude those state court proceedings.

C. Upon the determination of the Receiver's claim (fees and expenses), the Debtor will provide for payment of those through the Chapter 13 Plan.

The court has modified the automatic stay to allow the Receiver to prosecute the necessary motions for the determination of his fees, costs, and expenses in the Receivership State Court Action. Order; Dckt. 280.

The Status Conference is continued, it appearing that the remedial work for which the Receiver was seeking relief from the stay has been resolved by the General Contractor hired by the Debtor.

NOVEMBER 7, 2023 STATUS CONFERENCE

On October 31, 2023, the State Court Receiver notified the court that the hearings in the State Court receivership have been continued to November 8, 2023. The court has been continuing the hearings in this Motion, Motion to Excuse Turnover, Objection to Proof of Claim, and Motion to Confirm the Second Amended Plan until sufficiently after the State Court scheduled proceeding.

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 hearing on the Motion to Excuse Turnover filed by Gerard F. Keena II, the State Court Receiver, having been presented to the court, the court being notified that the hearings in the State Court Receivership Action having been continued to November 8, 2023, and upon review of the pleadings, and good cause appearing,

IT IS ORDERED that the hearing on the Motion is continued to **2:00 p.m. on November 21, 2023.**

Final Ruling: No appearance at the November 7, 2023 Hearing is required.

Debtor's Atty: Peter G. Macaluso

Notes:

Continued from 8/22/23. The Parties stating that the Motion for discharge of the Receiver and determination of the Receiver's Fees and Expenses will not be conducted until 10/31/23.

The hearing on the Objection to Claim of Gerard Keena, II, POC 1-1 is continued to 2:00 p.m. on November 21, 2023.

Nadia Zhiry, Chapter 13 Debtor, ("Debtor") requests that the court disallow the claim of Gerard F. Keena, II, ("Receiver"), Proof of Claim No. 1-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of \$183,585.18. Debtor asserts, without stating the legal basis supporting such argument, that:

1. **Receiver has no claim:**

- a. Receiver has no claim against Debtor "having been discharged in the 'Chapter 7', as the 'Receiver'" The Receiver has not been reappointed. Objection, Dckt. 193 at 3:4-7.

The court notes, Debtor has not provided any legal grounds that Receiver was discharged upon Debtor receiving their Chapter 7 discharge. Upon review of 11 U.S.C. § 727, a Chapter 7 discharge does not discharge the duties of an appointed custodian, but rather discharges debts and liabilities that arose before the date requesting relief. Debtor does not point to any authority in the Bankruptcy Code or the Superior Court's Receivership Order (*see* Order Appointing a Receiver Pursuant to Stipulated Judgment, Cal. Super. Ct. Sacramento Cnty. No. 34-2017-00208154, May 3, 2021 (filed in this case as Dckt. 195) (hereinafter the "Receivership Order")) that requires "reappointment" of the Receiver. The discharge did not abate the Receiver and Debtor provides no grounds that Receiver would need to be reappointed after receiving Chapter 7 relief.

2. **Receiver has no standing:**

- a. Receiver has no "standing" to assert any claim in this Chapter 13 case. Objection, Dckt. 193 at 3:14-15.

Upon review of the Proof of Claim, Receiver states they are owed money for the services provided. Receiver is not asserting a claim for a third party. Receiver, thus, has standing. Debtor conceded this at the hearing on the Status Conference on the Motion to Excuse Turnover and/or Motion to Confirm Termination or Absence of Stay.

3. **Receiver is owed no funds:**

- a. Receiver's Proof of Claim reflects no costs, no fees, and no charges between the filing of the previous Chapter 7 case and the filing of the current Chapter 13 case. Objection, Dckt. 193 at 2:8-12.

The Chapter 7 case was filed on July 29, 2021. E.D. Cal. No. 21-22759. The current case was filed on May 25, 2022. E.D. Cal. No. 22-21314.

Upon review of Receiver's Proof of Claim (E.D. Cal. No. 22-21314, Proof of Claim 1-1), Receiver does not provide a breakdown of the fees incurred before and after the Chapter 7 case. However, Receiver's Proof of Claim in the Chapter 7 case (E.D. Cal. No. 21-22759, Proof of Claim 1-1) was for \$82,217.54. Receiver's Proof of Claim in the current case is for \$183,585.18. Receiver clarifies their pre-Chapter 7 filing fees and post-Chapter 7 filing fees in their Response, which is summarized under "Receiver's Response."

- b. Having been discharged, and no claim transferring into the pending Chapter 13 case, Receiver is owed no funds.

The court notes, the claim is asserted to be fully secured. It is well known that liens survive a debtor's discharge, so the fact that Debtor received a discharge is not relevant to the claims survival. The debt still exists, and to the extent it is secured it is still enforceable.

RECEIVER'S RESPONSE

Receiver filed a response on May 30, 2023. Dckt. 234. Receiver indicates they amended their Proof of Claim to clarify distinctions between the *in personam* and *in rem* claim. The court notes, once a party has objected to a proof of claim, the creditor asserting the claim may not withdraw the claim except on order of the court. FED. R. BANKR. P. 3006. The court acknowledges that Receiver attempts to address Debtor's contentions that Receiver would be violating the discharge injunction.

The amended Proof of Claim, Proof of Claim 1-2, indicates the following:

Claim amount.....Unknown

It is not clear to the court why the amended claim amount is unknown, when Receiver later asserts the claim is fully secured in the amount of \$185,585.18.

Amount of claim that is secured.....\$185,585.18

Amount owed from expenses incurred
pre-Chapter 7 filing (July 29, 2021).....\$84,461.04

Amount owed from expenses incurred
post-Chapter 7 filing to date of
Chapter 13 filing (July 29, 2021 - May 25, 2022).....\$99,124.14

Receiver first addresses the *in personam* claim and states that Debtor's Objection to Receiver's Proof of Claim has been rendered moot because the \$99,124.14 *in personam* claim in the Amended Receiver Proof of Claim does not reflect any personal liability of Debtor that was previously discharged in Debtor's Chapter 7 case. *Id.* at 7; *see also* Attachment A to Amended Proof of Claim of Gerard F. Keena II, filed May 26, 2023.

Receiver also states that it still has a secured claim that was not previously discharged and that remains as an encumbrance against the Claire Avenue Properties. Dckt. 234, at 7. Finally, Receiver states that it appears that Debtor is arguing that the Chapter 7 case abated the Receivership Order. Dckt. 234, at 7. Receiver asserts that this argument is incorrect and lacks citation to any legal authority in support. *Id.* Receiver points to 11 U.S.C. § 543(d) and argues that the order appointing Receiver has not been abated and it was not necessary to reappoint the Receiver as Debtor suggests. *Id.* at 8.

DEBTOR'S REPLY

Debtor filed a reply on June 3, 2023. Dckt. 240. Debtor's reply concedes that the Amended Proof of Claim "technically moot[s]" Debtor's Objection, but asserts that:

- (1) Receiver did not follow the state court order;
- (2) Receiver has not had any fees approved;
- and (3) Receiver has not recorded its lien as required by the state court, rendering any claim as unsecured rather than secured.

Dckt. 240, at 1-2.

Debtor identifies a number of disputed material facts, *id.* at 7-8, and requests that this court either sustain its objection or, in the alternative, allow for an evidentiary hearing to determine the value of the claim, if any, *id.* at 9-10.

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.

It appears what remains unresolved is the amount of fees and expenses that are to be recoverable by Receiver. Debtor argues that Receiver has no fees allowed by the state court under the Receivership Order.

California Rule of Court 3.1179 states that the Receiver is “the agent of the court,” to act in the benefit of all people. The Receiver is an agent of the Superior Court of California. The court has not been provided with any legal authority indicating that a federal bankruptcy judge takes over the state court’s jurisdiction to determine the rights of the Receiver.

California Health and Safety Code gives explicit authority to a receiver to record a lien for fees and expenses, allowing a receiver:

To borrow funds to pay for repairs necessary to correct the conditions cited in the notice of violation and to borrow funds to pay for any relocation benefits authorized by paragraph (6) and, **with court approval, secure that debt** and any moneys owed to the receiver for services performed pursuant to this section with a lien on the real property upon which the substandard building is located. **The lien shall be recorded in the county recorder's office** in the county within which the building is located.

Cal. Health & Safety Code § 17980.7 (emphasis added).

Pursuant to the court order that was provided to the court, and recorded on May 13, 2021, “[t]he Receiver may record a lien (‘Receiver’s Lien’) against the Subject Properties to secure the repayment of the Receiver’s compensation, costs, and expenses, in accord with California Health and Safety Code section 17980.7(c)(4)(G). The Receiver’s Lien will be a lien on the Subject Properties prior and superior to all pre-existing private liens and encumbrances.” Proof of Claim 1-2, Recorded Order Appointing a Receiver Pursuant to Stipulated Judgment, Attachment 1 at ¶ 7.

Continuance of Hearing

As the court addressed at the hearing, in light of the Receiver seeking to pursue the allowance of fees and expenses in the State Court Action, the court continues the hearing on this Objection for purposes of conducting a status conference thereon to determine what, if any amended pleadings are required and if any dispute remains to be resolved.

NOVEMBER 7, 2023 STATUS CONFERENCE

On October 31, 2023, the State Court Receiver notified the court that the hearings in the State Court receivership have been continued to November 8, 2023. The court has been continuing the hearings in this Motion, Motion to Excuse Turnover, Objection to Proof of Claim, and Motion to Confirm the Second Amended Plan until sufficiently after the State Court scheduled proceeding.

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 Gerard F. Keena, II, (“Receiver”), filed in this case by Nadia Zhiry, Chapter 13 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 hearing on the Objection to Proof of Claim Number 1-1 is continued to **2:00 p.m. on November 21**, for a Status Conference.

16. [22-21314-E-13](#)
[PGM-5](#)

NADIA ZHIRY
Peter Macaluso

STATUS CONFERENCE RE: MOTION TO
CONFIRM PLAN
7-12-23 [\[285\]](#)

Final Ruling: No appearance at the November 7, 2023 Hearing is required.

Debtor’s Atty: Peter G. Macaluso

Notes:

Set by order of the court filed 8/22/23 [Dckt 308] for a status and scheduling conference.

The hearing on the Motion to Confirm the Amended Plan is continued to 2:00 p.m. on November 21, 2023 for a Status and Scheduling Conference.

The debtor, Nadia Zhiry (“Debtor”), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly Plan payments of \$500 per month for the first 13 months, followed by \$2,000 per month for the remainder of the Plan. Amended Plan, Dckt. 289. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Over the 60 months of the Plan, this would total \$100,500 in plan payments by Debtor.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on August 1, 2023. Dckt. 300. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor is delinquent in Plan payments.
- B. The Plan may extend sixty (60) months, depending on when the Civil Action concludes.

- C. Debtor relies on payments from daughter, however, Daughter has not provided a declaration indicating they will be able to make Plan payments for sixty (60) months.
- D. Debtor's expenses appear low.
- E. The Plan appears underfunded if the receiver's claim remains allowed in the full amount.

RECEIVER'S JOINDER

The Receiver, Gerard F. Keena II ("Receiver"), filed a "Joinder" to Trustee's opposition on August 8, 2023. Dckt. 303. The court treats the "Joinder" as the Receiver's Opposition. The Receiver shares Trustee's concerns in that:

- 1. No information is provided to determine how long the Debtor's daughter intends to relocate at the property.
- 2. The rent is taxable income and there has been no discussion as to the anticipated amount of taxes paid on the rent.
- 3. There is no evidence as to the daughter's intention and ability to make the payments on a consistent basis.

DEBTOR'S RESPONSE

Debtor filed a response, Dckt. 305, on August 8, 2023, indicating:

- 1. Debtor intends to be current by the hearing date.
- 2. Debtor believes the Receiver fees will be determined on August 31, 2023, thus concluding the civil action and not making the case overextended.
- 3. Debtor submitted the declaration of Debtor's daughter as evidence to support the daughter's commitment to helping fund the Plan.

From the court's review of the docket, Debtor's daughter, Vera, submitted a declaration on April 24, 2023, in support of Debtor's First Amended Plan, indicating that they are willing and able to contribute \$1,500 per month. Dckt. 198. Vera does not indicate how long they intend to live at the property.

Debtor's daughter has not submitted a declaration in support of the current Motion indicating their ability to help fund the Second Amended Plan.

- 4. Debtor has filed current amended schedules and assert that their expenses are lower than the average family of two.

The court notes, Debtor has only filed Amended Schedules I, no Amended Schedule J. Dckt. 292.

5. Debtor asserts that the Receiver's fees will be significantly less than the Proof of Claim.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is \$1,500 delinquent in Plan payments. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Failure to Complete Plan Within Allotted Time

Trustee indicates Debtor may not be able to complete the Plan in sixty months, as the Civil Action is still pending and Debtor does not intend to pay the Receiver until after the conclusion of the "Civil Action." Debtor indicates the Civil Action will be concluded at the end of the month.

Failure to Afford Plan Payment / Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6).

Debtor's daughter has not submitted a declaration in support of the current Motion and ability to fund the Second Amended Plan. Debtor's daughter only submitted a declaration for the First Amended Plan, which was denied confirmation.

Debtor has only filed an Amended Schedule I, and not an Amended Schedule J. Dckt. 292. Therefore, the court does not have an accurate picture of Debtor's expenses and financial reality.

Debtor leaves the court to consider her family expenses (for two adults, Debtor and her husband) as set forth in Supplemental Schedule J filed on April 10, 2023. Dckt. 192. The expenses which Debtor states under penalty of perjury are reasonable and necessary for her family unit of two adults consist of:

Mortgage	\$0.00	In the proposed Chapter 13 Plan Debtor's Daughter is to make monthly payments totaling \$1,750.00 to JPMorgan Chase Bank as Class 4 direct payments under the Plan.
Property Insurance	\$0.00	Testimony that it is included in the monthly mortgage payments. Dec., ¶ 8; Dckt. 287.
Real Estate Taxes	\$0.00	Testimony that it is included in the monthly mortgage payments. Dec., ¶ 8; Dckt. 287.
Home Maintenance and Repairs	\$0.00	
Electricity, Heat, Natural Gas	\$200.00	This is for two residential properties on the Debtor's real property

Water, Sewer, Garbage	\$140.00	
Telephone, Internet, Cell Phone	\$50.00	
Food and Housekeeping Supplies	\$400.00	Assuming \$50 a month for housekeeping supplies, that leaves \$350 a month for food for the two adults. In a thirty day month, that allows for \$1.94 per meal per person for food (assuming three meals a day per person).
Clothing and Dry Cleaning	\$10.00	This allows each adult \$5 a month for clothing over the 60 months of the Plan. This is only \$60 per adult per year for clothing for five years.
Personal Care and Products	\$20.00	This allows each adult \$10 a month for personal care (such as haircuts and hair dressers) and products (such as lotions, creams, and the like).
Medical and Dental Expenses	\$25.00	This allows each adult \$12.50 a month for medical and dental co-pays, band-aids, creams, mouthwash, toothpaste and the like.
Transportation (gas, maintenance, and repairs)	\$100.00	<p>On Amended Schedule C, Debtor claims an exemption in a 2007 Kia Rondo with 165,000 miles on it. Dckt. 227. Debtor lists this as the only vehicle Debtor has an interest in on Amended Schedule A/B, stating it has a value of \$2,500.00. Dckt. 207.</p> <p>If one allows only \$35.00 a month for repairs for the next five years (which is only \$420 a year), there is \$65 for gas a month. Paying \$5.00 a gallon for gas, Debtor and her non-debtor Spouse can purchase only 13 gallons of gas a month. Assuming the 2007 vehicle gets 20 miles to the gallon, that would allow Debtor to drive only 65 miles a week, which is only 9 miles a day.</p>
Entertainment	\$10.00	This allows the Debtor and her non-debtor Spouse only \$5 a month for entertainment. Thus, for the five years of the Plan, Debtor and her non-debtor Spouse will have next to no entertainment in their lives.
Vehicle Insurance	\$50.00	For the 2007 vehicle that Debtor and her non-debtor Spouse can only drive for 9 miles a day, Debtor will pay \$600 a year in insurance.

Debtor's statement under penalty of perjury that Debtor and her non-debtor Spouse only have \$1,005 a month in necessary and reasonable expenses for the five years of the bankruptcy plan.

On the latest Supplemental I filed, Dckt. 292, Debtor states having the following Income:

Debtor's Social Security Income.....\$505.00
Non-Debtor Spouse's SSI.....\$1,000.00

Dckt. 292. Debtor also lists an additional \$1,500.00 in monthly rent paid by her daughter Vera and Debtor includes that in computing her monthly income. However, the Second Amended Plan requires an unidentified daughter of Debtor to make monthly payments of \$1,500.00 and \$250.00 to Class 4 Creditor JPMorgan Chase Bank, N.A. Second Amd Plan, ¶ 3.10; Dckt. 289. In her Declaration in support of the Motion to Confirm the Second Amended Plan, Debtor testifies that it is her daughter Luyba who is making the monthly mortgage payments, which include insurance and taxes. Dec., ¶ 8; Dckt. 287.

There appear to be some significantly understated expenses by Debtor. These include gas, maintenance, and repairs for Debtor 16 year old vehicle, maintenance and repair of Debtor's two residences, cell, internet, and video service for two adults, food, personal care, medical expenses, and entertainment. Rather than stating actual reasonable and necessary expenses, it appears that Supplemental Schedule J is a MAI (made as instructed) Schedule J to show a preconceived monthly net income.

The Receiver's Proof of Claim indicates a secured claim in the amount of \$183,585.18. Debtor insists the Civil Action will determine that the claim is for significantly less, and is hopefully that the Receiver's fees and costs will be only \$3,625.10. This is significantly less than Receiver's claim.

Looking at Amended Proof of Claim 1-2, the Receiver has filed it as a secured claim, with the lien being asserted on the Real Property in this case. Exhibit 1 to Amended Proof of Claim 1-2 is a copy of the order appointing the receiver that was recorded with the Sacramento County Recorder, which states a recording date of May 13, 2021. With respect to compensation, expenses, and a lien securing the amounts owing to the Receiver, the State Court Order Appointing Receiver includes:

3. The Receiver will be compensated for his services in the amount of \$250 per hour. The Receiver may use the Receiver's attorneys, paralegals, and other staff to assist him as necessary. Receiver's personnel will be compensated in the amounts outlined in the billing rate schedule attached hereto as Exhibit A. The Receiver will be reimbursed for the Receiver's reasonable costs and expenses incurred in connection with receivership activities, including expenses for those labor and service described in this Order, travel, copying, long distance telephone calls, and legal process. . . .

7. The Receiver may record a lien ("Receiver's Lien") against the Subject Properties to secure the repayment of the Receiver's Compensation, costs, and expenses in accord with California Health and Safety Code section 17980.7(c)(4)(G). The Receiver's Lien will be a lien on the Subject Properties prior and superior to all pre-existing private liens and encumbrances.

In the General Statement of Claim that is attached to Amended Proof of Claim 1-2, the Receiver states that there were \$84,461.04 in fees and expenses incurred from his May 3, 2021 appointment (Date on the State Court Order of Appointment) through July 29, 2021, and additional fees and expenses in the amount of \$88,124.14 incurred for the period July 30, 2021 through May 25, 2022 (the Chapter 13 filing date). Amended Proof of Claim No. 1-2 does not include amounts for fees and expenses incurred during this Chapter 13 Case.

The Order appointing the Receiver allows him to bill his time at \$250 an hour. There are similar hourly rates allowed for in-house counsel of the Receiver. There is not an hourly rate stated for any “out-house counsel” employed by the Receiver. If during the fourteen months of this Chapter 13 Case the Receiver and his counsel billed only ten hours a month, then each would be seeking compensation for 140 hours each, with an hourly rate of at least \$250.00 (this court does not know what hourly rate the State Court will allow for the “out-house counsel”). One hundred and forty hours times \$250 an hour equals \$19,600.00, each for the Receiver and the “out-house counsel,” which then totals \$39,200.00 in fees since the commencement of this Chapter 13 case.

It is not readily apparent how Debtor computes Receiver to have a claim of only \$3,625.10 at the outset. It is also unclear how the Receiver has incurred fees and expenses totaling \$183,585.18, plus additional fees and expenses during this case, in light the status of the property at issue when this case was filed.

Debtor has not provided a provision in the Plan as to what will occur if Receiver’s claim is determined to be for the full amount of \$183,585.18, plus post-Chapter 13 filing fees and costs, or any lesser reasonable amount allowed by the State Court judge in the Receivership Action. Without the court knowing the extent of Receiver’s claim, the Plan does not appear confirmable.

Without an accurate picture of Debtor’s financial reality, the court cannot determine whether the Plan is confirmable.

In light of the prosecution of the discharge of the Receiver and determination of his fees and expenses, which hearing is set for October 31, 2023, the Parties agreed to the continuance of the hearing on this Motion.

NOVEMBER 7, 2023 STATUS CONFERENCE

On October 31, 2023, the State Court Receiver notified the court that the hearings in the State Court receivership have been continued to November 8, 2023. The court has been continuing the hearings in this Motion, Motion to Excuse Turnover, Objection to Proof of Claim, and Motion to Confirm the Second Amended Plan until sufficiently after the State Court scheduled proceeding.

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, Nadia Zhiry (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Motion to Confirm the Amended Plan is continued to **2:00 p.m. on November 21, 2023** for a Status and Scheduling Conference.

17. [23-22727](#)-E-13
[DPC-1](#)

ISIAH LEWIS
Pro Se

**OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
10-11-23 [\[52\]](#)**

DEBTOR DISMISSED: 10/19/23

Final Ruling: No appearance at the November 7, 2023 hearing is required.

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

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

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

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

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

Final Ruling: No appearance at the November 7, 2023 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 12, 2023. By the court’s calculation, 56 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.

<p>The Motion to Confirm the Amended Plan is granted.</p>
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11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Edward Lewis (“Debtor”) has provided evidence in support of confirmation. Declaration, Dckt. 24. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Response indicating non-opposition on October 26, 2023. Dckt. 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, Edward Lewis (“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, 2023, 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.

19. [23-21853-E-13](#)
[BLG-4](#)

ANDRE SHAVERS
Chad Johnson

**MOTION FOR COMPENSATION FOR
CHAD M JOHNSON, DEBTORS
ATTORNEY(S)
9-20-23 [51]**

Final Ruling: No appearance at the November 7, 2023 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 20, 2023. 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 Chapter 13 Attorney’s 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.

<p>The Motion for Allowance of Chapter 13 Attorney’s Fees is granted.</p>
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Chad M. Johnson, the Attorney (“Applicant”) for Andre Shavers, the Chapter 13 Debtor (“Client”), makes a First Interim Request for the Allowance of Fees and Expenses in this case. The Confirmation Order provides for Debtor’s counsel to seek the allowance of fees pursuant to 11 U.S.C. § 330, Applicant having opted out of the no-look Chapter 13 fee provisions. Order, Dckt. 57.

Fees are requested for the period April 22, 2023, through November 7, 2023. Applicant requests fees in the amount of \$6,610.00 and costs in the amount of \$90.64.

APPLICABLE LAW

Reasonable Fees

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

- A. Were the services authorized?
- B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?
- C. Are the services documented adequately?
- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
- E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

Even if the court finds that the services billed by an attorney are “actual,” meaning that the fee application reflects time entries properly charged for services, the attorney must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An attorney must exercise good billing judgment with regard to the services provided because the court’s authorization to employ an attorney to work in a bankruptcy case does not give that attorney “free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat’l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913

n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

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

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

A review of the application shows that Applicant’s services for the Estate include case preparation, case administration, and filing motions. The court finds the services were beneficial to Client and the Estate and were reasonable.

TRUSTEE’S NON-OPPOSITION

The Chapter 13 Trustee, David Cusick, filed a Non-Opposition on October 17, 2023. Dckt. 60.

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 9.4 hours in this category. Applicant evaluated the option of filing a bankruptcy filing, collected the necessary documents for case preparation, reviewed and filed bankruptcy documents, sent the required documents to the Trustee, attended the meeting of creditors, and reviewed the proof of claims as they were filed. Declaration, Dckt. 53.

Motion to Value: Applicant spent 2.30 hours in this category. Applicant filed a Motion to Value the Class 2 Claim of the Small Business Administration and the Class 2 Claim of the IRS. *Id.*

Motion to Confirm Amended Plan: Applicant spent 2.60 hours in this category. After a review of claims, Applicant worked on the amended Plan and Motion to Confirm the amended Plan. *Id.*

Fee Motion: Applicant spent 1.10 hours in this category. Applicant filed a Motion for Approval of Fees and prepared a task summary statement.

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Chad M. Johnson	15.40	\$400.00	\$6,160.00
Total Fees for Period of Application			\$6,160.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$90.64 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Postage		\$41.19
Printing and Envelopes		\$17.45
Amendment - Court Fee		\$32.00
Total Costs Requested in Application		\$90.64

FEES AND COSTS & EXPENSES ALLOWED

Money Held in Trust

Applicant notes that the he was paid \$900.00 prior to the filing the case, and such payment was held in a client trust account until Debtor's case was filed. Declaration, Dckt. 53. Upon filing, the Applicant removed \$313.00 and \$45.00 from the trust to cover the court filing fee and credit report fee, respectively. *Id.* The balance of the trust is \$542.00. *Id.* The Applicant requests the court authorize the Applicant to pull the remaining balance of \$542.00 out of trust, and that the Chapter 13 Trustee be authorized to pay the balance of the fees and expenses in the amount of \$5,708.64 from available plan funds. Motion, Dckt. 51.

The court authorizes the Applicant to withdraw the remainder of the funds from the client trust account for the purposes of covering costs in the amount of \$90.64, and the remaining funds of \$451.36 in the trust are to be paid toward Applicant's fees. The Chapter 13 Trustee is to pay the outstanding fee amount less the trust payment, \$5,708.64, to Applicant as allowed by the court.

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 \$6,160.00 are approved

pursuant to 11 U.S.C. § 331, and subject to final review pursuant to 11 U.S.C. § 330. Applicant is authorized to pay his fee from the client trust in the amount of \$451.36, and the Chapter 13 Trustee is authorized to pay the remainder of the fee in the amount of \$5,708.64 from the available plan funds in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

Costs & Expenses

First Interim Costs in the amount of \$90.64 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 trust.

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

Fees	\$6,160.00
Costs and Expenses	\$90.64

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

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

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

The Motion for Allowance of Fees and Expenses filed by Chad M. Johnson (“Applicant”), Attorney for Andre Shavers, Chapter 13 Debtor (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Chad M. Johnson is allowed the following fees and expenses as a professional of the Estate:

Chad M. Johnson, Attorney the Chapter 13 Debtor

Fees in the amount of \$6,160.00
Expenses in the amount of \$90.64,

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.