UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

November 19, 2024 at 2:00 p.m.

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1. 23-22540-E-13 RCW-17 | **SATINDER SINGH** **Ryan Wood** | **MOTION FOR COMPENSATION FOR RYAN C. WOOD, DEBTORS ATTORNEY(S)** **9-27-24 [315]**

Item 1 thru 3
DEBTOR DISMISSED: 09/13/24

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

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

Insufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Creditors, and Office of the United States Trustee on September 27, 2024. By the court's calculation, 53 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). Movant is five days late of the required notice.

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

The Motion for Allowance of Professional Fees is granted.

Ryan C. Wood, the Attorney ("Applicant") for Satinder Singh, The Chapter 13 Debtor ("Client"), makes a Second and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period May 1, 2024, through September 27, 2024. Applicant requests fees in the amount of $8,190.00 and costs in the amount of $104.99.

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)).

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.

Case Administration/Plan Confirmation: Applicant spent 5.8 hours in this category. Applicant was in the process of finalizing debtor's reply to Placerville's opposition to motion to value collateral at the time of the debtor's untimely death. Decl. 3:1-6, Docket 317.

Motion to Substitute Representative: Applicant spent 11.10 hours in this category. Applicant sought to have Debtor's son, Humas Madaan, appointed as the substitute. Decl. 3:7-12, Docket 317.

Fee Application: Applicant spent 1.3 hours in this category. Applicant drafted and filed application for compensation.

On August 28, 2024, Debtor filed a Motion to Value the Secured Claim of Placerville Investment Group, LLC. Dckt. 31. The hearing on the Motion to Value was conducted on October 3, 2024. The court ordered that the Motion to Value was denied without prejudice. Order; Dckt. 61.

As stated in the court's ruling on the Motion to Value (Civil Minutes, Dckt. 60), in which the court addresses shortcoming of both the Debtor and Creditor in presenting their sides in the Contested Matter. The Debtor and Creditor agreed to dismiss the Motion to Value without prejudice, as they would seek to find a resolution to their dispute.

On September 28, 2024, the Chapter 13 Trustee filed a Motion to Dismiss this Bankruptcy Case. Motion; Dckt. 55. On December 13, 2024, the court denied the Motion to Dismiss without prejudice. Order; Dckt. 101.

On October 12, 2023, Creditor Placerville Investment Group, LLC filed an Objection to Exemptions claimed by Debtor. Objection; Dckt. 62. The court entered its order sustaining the Objection and disallowing a tools of the trade exemption in the amount of $9,525.00 in a liquor license. *Id*. In the court's published Memorandum Opinion and Decision (Dckt. 108), various shortcomings of Debtor in providing legal authorities for the proposition that a liquor license is a tool of the trade under California law. The court also notes that the lay person Debtor was testifying under penalty of perjury that his legal opinion was that a liquor license was a tool of the trade. Memorandum Op and Decision, p. 3:11-12; Dckt. 108. The court afforded both the Creditor and Debtor to file supplemental points and authorities in support of their respective positions. Debtor's was filed on December 5, 2023 (Dckt. 91), and while it is long on argument, provides no legal authorities for the proposition that a liquor license was a tool of the trade. See Memorandum Opinion and Decision, Dckt. 108, for analysis of the law, statutory and common language definitions, and the statutory exclusion of liquor licenses from being exempt of enforcement of judgments. Fn.1.

FN. 1. As stated in the Memorandum Opinion and Decision, as well as the court's order on the Objection to Exemption, the court agreed that the Debtor could claim a wildcard exemption of $29,586.88 in the liquor license, with the only issue being the additional $9,525.00 exempt as a tool of the trade. The wildcard exemption was not in dispute, but only the tool of trade exemption. It appears that both the Debtor and Creditor spend more than $9,525.00 each in this fight.

On October 12, 2023, Debtor filed a Motion to Confirm the Chapter 13 Plan. Dckt. 66. On December 13, 2023 the court denied the Motion to Confirm. Order; Dckt. 100. The oppositions to the Motion included that the Debtor had failed to file a Motion to Value Secured Claim which determination needed to be made before the Plan as proposed by Debtor could be confirmed. Another ground was that the Debtor failed to provide a proper *Till* interest rate (having a 0.00% interest rate in the Plan) for Creditor Placerville Investment Group LLC's secured claim. Civ. Minutes; Dckt. 97.

The Debtor's counsel then advised the court that Debtor would not pursue the Plan before the court, but would file and seek to confirm an amended Plan. See Civil Minutes, Dckt. 97, for the court's ruling.

On May 22, 2024, Debtor filed an Amended Chapter 13 Plan (Dckt. 221), and a Motion to Confirm (Dckt. 222). The confirmation hearing was set for July 16, 2024. Ntc of Hrg; Dckt. 223. The hearing on the Motion was continued to September 10, 2024, and ultimately failed confirmation.

On January 11, 2024, Debtor filed a second Motion to Value the Secured Claim of Creditor Placerville Investment Group LLC. Motion (DCN: RCW-9); Dckt. 127. The hearing on that Motion was set for June 4, 2024. The court denied that Motion on September 13, 2024. Docket 304.

Debtor's untimely death complicated a case already plagued by delay and inability to prosecute by Debtor. On June 25, 2024, Mr. Wood filed a Notice of debtor's death and Motion to Substitute Humas Madaan in the case as Debtor's substituted representative. Docket 243. The Motion was lacking in evidence that showed the court Mr. Madaan was qualified to prosecute the case. The court extensively addressed these issues in the Civil Minutes at Docket 273.

Of note, there was no evidence that Mr. Madaan was truly the sole heir on the Late Debtor in the Bankruptcy Case as Mr. Wood had represented to the court. The court was provided with a Declaration stating Mr. Madaan was the sole heir and could run the business, but no evidence of the holographic will was ever uploaded with the court, even when the court requested such documentation.

The overall theme in this Bankruptcy Case inevitably continued with this Motion as with every other Motion Debtor put forward: delay and failure to prosecute. The court was compelled to Order all interested parties to appear and explain how this was going to go forward with one final hearing to be held on September 10, 2024. Order, Docket 274. Shortly before the hearing, instead of correcting any defects in the pleadings, Mr. Wood informed the court his Motion to Substitute was no longer feasible (without explaining why or how it was even feasible in the first place). Mr. Wood then informed the court that he no longer had a dog in this fight and another attorney, Mr. Macaluso, would take the case forward. There was no Motion to Withdraw on file, and there was no Motion to Substitute Counsel on file.

From the evidence available on the record, there was never a realistic chance Mr. Madaan could prosecute the case in his late father's stead, giving credibility to a potential finding that the Motion was frivolous from the outset. Mr. Wood confirmed as much when he drafted and filed a Motion to Dismiss this case in lieu of providing the court with any answers to its questions.

In the Motion to Dismiss, Mr. Wood stated simply: "Due to additional information from Probate Attorney, Mindin Reid, and information recently obtained from the Alcohol Beverage Control it is no longer tenable to appoint Humas Madaan as the Substitute Representative." Mot. 2:16-18, Docket 268. Such information was likely apparently available before the Motion to Substitute was ever filed, and this fact is confirmed by Mr. Wood failing to ever upload the copy of the holographic will with the court, despite this court suggesting numerous times a copy of the will is required to move forward. *See* Civil Minutes, Docket 273.

Yet, Mr. Wood now requests further fees, having already been awarded over $25,000 in fees in this failed case, with roughly 2/3 the amount now requested related to the Motion to Substitute. Mr. Wood states in his Declaration in support of the Motion for Compensation that:

> Applicant incurred twice the amount request to be awarded and few of the texts, emails or phone calls regarding seeking to appoint a substitute representative are listed, if at all. This was lengthy process requiring multiple hearings and ordered personal appearance. Decl. 3:10-12, Docket 317.

There is nothing in the record showing Applicant incurred twice the amount of requested fees. The submitted time-billing sheets do not support such a contention.

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**

Ryan C. Wood	18.2	$450.00	$8,190.00
Total Fees for Period of Application			$8,190.00

The court awarded Applicant First Interim Fees in the amount of $25,155. Docket 241.

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $104.99 pursuant to this application. The court previously awarded costs in the amount of $115.27.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Case Administration– Copies	$0.20	$1.60
Motion to Substitute– Postage, Parking, Copies		$46.60
Fee Application– Copies, Postage		$57.09
Total Costs Requested in Application		$104.99

FEES AND COSTS & EXPENSES

Fees

This Chapter 13 Case was filed on July 31, 2023. As summarized above it did not proceed smoothly in prosecution by the Debtor. While spending time, and money, arguing and litigating over issues, there was little success for Debtor.

While filed as a Chapter 13 case, it involved the operation of a retail store as Debtor's source of income. The "big issue" in this case centered around the value of the business assets which secured the claim of Creditor Placerville Investment Group, LLC.

For the Second Period of time, Applicant seeks $8,190.00 in legal fees. With an hourly rate of $450/hour, for the period of May 1, 2024 through September 27, 2024 this represents 18.20 hours. On Exhibit 1 (Dckt. 318) Applicant provides the detail for the billing. On Exhibit 1 Applicant organizes his work into the following categories and hours for such time:

Task Area	Time Billed (hours)
Case Administration	6.0

Motion To Substitute Representative	11.1
Application for Compensation	No Time Stated

The billing records state 17.10 hours of legal services billed for the Second Period. The time shown on Exhibit 1 is 1.1 hours less than stated in the Motion.

There is no doubt that Applicant spent time doing things on this Bankruptcy Case, but much of what was done, especially in the Second Period from May 1, 2024 through September 27, 2024, were non-productive. While seeking to have the Late Debtor's 18 year old son to be appointed a successor representative to run the retail store that sells alcohol, and representing to the court that such was a "sure thing" and that probate counsel, who provided her declaration testifying that she had reviewed a holographic will and everything went to the Late Debtor's 18 year old son and not the other two minor children, such "fell through" when the court looked at it further. Even the probate counsel came back to tell the court that he was mistaken and now it would not work.

Though time was spent seeking to have the 18 year old son appointed as the successor representative, those efforts faltered from the start.

Going back to the First Interim Fees Allowed, the task billing analysis and billing records provided by Applicant (Exhibit 1; Dckt. 215) breaks the legal fees for which final approval is requested into the following task billing categories.

Task Area	Time Billed (hours)
Case Administration	19.9
Objection to Claim of Exemption	5.5
Motions to Value	27.85
Application for Compensation	3.0

The billing records show 56.25 hours billed for legal services for the First Interim Period for which final approval is now requested.

In looking at these task billings, it is shocking to the court that only 5.5 hours is billed to defending the Objection to Claim of Exemption. It appears that this claiming of the exemption and then defending the Objection was not based on the law, investigation of the law, and presentation of the law to the court, but merely just claiming it and seeing if Debtor can keep it. It appears that the court spent more time in just preparing the Memorandum Opinion and Decision (Dckt. 108) for the Objection to Claim of Exemption then Debtor and Applicant did in asserting and defending it. This appears to be a basic strategy of what the Late Debtor, and then his 18 year old son as the purported successor representative, and Applicant have done in the prosecution of this Bankruptcy Case - take positions, make arguments, and assert positions without regard to the actual law (or possibly facts).

Using the time billed and a $450/hour billing rate, the fees from the billing records total as follows:

Period	Hours	$450 hourly billing rate	Total Fees
First Period	56.25	$450.00	$25,312.50
Second Period	17.10	$450.00	$7,695.00
		Total Fees From Billing Records	$33,007.50

The court is unfortunately faced with a situation where there has been billed fees at $450/hour for 63.35 hours in which there was little productive administration of the Bankruptcy Case done. While promising a lot, Applicant, the Debtor, and then the Late Debtor's 18 year old son that Applicant sought to get appointed as a successor representative to run the retail business that sells alcohol accomplished little - other then to delay Creditor exercising its rights for a year.

For the Motion to Value Creditor's Secured Claim, 27.85 hours are billed at $450/hour. That battle began on August 27, 2023 when the first Motion to Value was filed. Dckt. 31. That was concluded on October 3, 2023, when the court dismissed it without prejudice as agreed by the Parties. The court addresses the broader scope of issues concerning the valuation of Creditor's secured claim. Civ. Min.; Dckt. 60. No fees were billed for the Second Period in this Case.

A second Motion to Value was filed on January 11, 2024, and then a second was filed on April 26, 2024 (both using Docket Control No. RCW-9). Dckts. 127, 206. It does not appear that Applicant spent much time on the Motion to Value during the Second Period.

As is clear from the above, the court has concerns relating to how this Bankruptcy Case was prosecuted, rights asserted, and then not a basis for such rights documented by Debtor or the proposed successor representative, the Late Debtor's 18 year old son. In determining reasonable fees, the court also recognizes that Debtor suffered from some mental health issues, which ultimately led to his death. This may well have placed on Applicant some unusual challenges.

However, after the Debtor's death, the practices by Applicant continued as shown in the Motion to have the Late Debtor's 18 year old son substituted in as a successor representative to run the retail business that sells alcohol. Though representing to court that the 18 year old could do it and the probate counsel gave her declaration that all was proper, when the court ordered them to provide documentation of the holographic will and how this could be run by an 18 year old, the story changed. Applicant stated that he no longer represented the 18 year old son, stepping away from the Case (without the court having authorized him to withdraw as counsel for the son).

At the end of the day, Applicant has spent time and effort keeping the case alive, though no productive results were obtained. This results in significant cost to the estate of the Late Debtor. However, it may well be that the Late Debtor got exactly what he wanted – delay at all costs having to pay Creditor.

From the work done, the court questions whether the legal services were of a $450.00 hourly rate. The court states this not based on a parochial small town billing rate market, but considering the services provided in the Bay Area of California (where Applicant is located).

If the court takes the 63.35 total hours from the billing records and multiplies it by $400 an hour, that would equal $25,340.00, equal to approximately the fees requested during the First Period for interim fees.

However, no one has objected to the fees requested. The new attorney for the Late Debtor's Wife/Ex-Wife and adult son have been served. Cert. Service; Dckt. 319. Counsel for Creditor has been served. The U.S. Trustee has been served. None have filed any opposition to the Motion.

While questions arise, the court allows as final fees the following amounts:

First Interim Period.....$25,312.50
Second Interim Period.....$7 ,695.00

for a total of $33,007.50, and approves such as final fees pursuant to 11 U.S.C. § 330.

Costs & Expenses

Second and Final Costs in the amount of $104.99 and the First Interim Costs of $115.27, for total Costs of $220.26, are approved pursuant to 11 U.S.C. § 330 and are authorized to be paid by **xxxxxxx** ~~the Chapter 13 Trustee~~.

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 Ryan C. Wood ("Applicant"), Attorney for Satinder Singh, 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 Ryan C. Wood is allowed the following fees and expenses as a professional of the Estate:
>
> Ryan C. Wood, Professional employed by Chapter 13 Debtor
>
> Fees in the amount of 7,695.00
> Expenses in the amount of $104.99
>
> as a final allowance of fees and expenses pursuant to 11 U.S.C. § 330.

The fees and costs pursuant to this Motion, and fees in the amount of $25,155 and costs of $115.27 approved pursuant to prior Interim Application, are approved as final fees and costs pursuant to 11 U.S.C. § 330.

IT IS FURTHER ORDERED that the Chapter 13 Trustee is authorized to pay the fees and costs allowed by this Order from monies held by **xxxxxxx** ~~the Chapter 13 Trustee~~ in this Bankruptcy Case.

2. **23-22540-E-13 RHS-1** **SATINDER SINGH**

CONTINUED STATUS CONFERENCE RE: ORDER FOR FILING OF FINAL MOTION FOR ALLOWANCE OF ATTORNEY'S FEES AND COSTS BY COUNSEL FOR DEBTOR
9-13-24 [308]

DEBTOR DISMISSED: 09/13/24

Debtor's Atty: Ryan C. Wood

Notes:
Continued from 10/8/24 to be conducted in conjunction with the Motion for Compensation for Ryan C. Woods, Debtors Attorney.

The Motion for Allowance of Attorney's Fees and Costs having been filed and set for hearing, **the Attorney's Fees Status Conference is concluded and removed from the Calendar.**

3. **23-22540-E-13 RHS-2** **SATINDER SINGH**

CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION
7-31-23 [1]

DEBTOR DISMISSED: 09/13/24

Debtor's Atty: Ryan C. Wood

Notes:
Continued from 10/8/24 pursuant to Order of the court [Dckt 321]

The Bankruptcy Case having been dismissed, the Status Conference is concluded and removed from the Calendar.

4. 24-23380-E-13 GC-1 | **SOFIA GALVAN** / **Julius Cherry** | **MOTION FOR COMPENSATION BY THE LAW OFFICE OF GLAZER AND CHERRY DEBTORS ATTORNEY(S) 11-4-24 [16]**

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 November 4, 2024. By the court's calculation, 15 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00). Movant is six days late of the required notice period. At the hearing, **xxxxxxx**

The Motion for Allowance of Chapter 13 Attorney's Fees 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 for Allowance of Chapter 13 Attorney's Fees is granted.

Gerald Glazer, the Attorney ("Applicant") for Sofia Andrea Galvan, the Chapter 13 Debtor ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case. The court confirmed the Plan on September25, 2024, where Debtor opted out of the no-look fee provision. Docket 13; Plan, Docket 3.

Applicant requests fees in the amount of $6,500, having received a prepetition retainer in the amount of $1,500 and requesting the remainder of the fees in the amount of $5,000 to be paid through the Plan in eight payments of $600 and one payment of $200.

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 prosecuting the case efficiently resulting in plan confirmation. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES REQUESTED
Fees

The fees requested are computed by Applicant and Debtor agreeing to a flat rate of representation in the amount of $6,500 with Debtor having paid a prepetition retainer of $1,500. See Decl. ¶ 4, Docket 18; Ex. A, Docket 19.

FEES ALLOWED
Fees
Hourly Fees

The court finds that the rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $6,500 are approved pursuant to 11 U.S.C. § 330. Applicant is authorized to retain the $1,500 and apply that amount toward the fee award immediately. The Chapter 13 Trustee is authorized to pay the remainder of the fees in the amount of $5,000 through the Confirmed Chapter 13 Plan in eight payments of $600 and one payment of $200.

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

Fees $6,500

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

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

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

The Motion for Allowance of Fees and Expenses filed by Gerald Glazer, the Attorney ("Applicant") for Sofia Andrea Galvan, the Chapter 13 Debtor ("Client")

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

IT IS ORDERED that Gerald Glazer is allowed the following fees and expenses as a professional of the Estate:

Gerald Glazer, Attorney the Chapter 13 Debtor

Fees in the amount of $6,500,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for Chapter 13 Debtor.

IT IS FURTHER ORDERED that Applicant is authorized to retain the $1,500 prepetition retainer and apply that amount toward the fee award immediately. The Chapter 13 Trustee is authorized to pay the remainder of the fees in the amount of $5,000 through the Confirmed Chapter 13 Plan in eight payments of $600 and one payment of $200.

5. 23-23608-E-13 PGM-5 | **TEMA ROBINSON** | **MOTION TO CONFIRM PLAN**
Peter Macaluso | **10-7-24 [125]**

Items 5 thru 6

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, attorneys of record, parties requesting special notice, and Office of the United States Trustee on October 7, 2024. By the court's calculation, 43 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is xxxxxxx

The debtor, Tema Kay Robinson ("Debtor"), seeks confirmation of the Fourth Amended Plan. The Amended Plan provides in the Non-Standard Provisions:

1. Debtor has paid of total of $8,826,00 through September 2024;

2. Plan payments of $420.00 per month will commence October 25, 2024 for 49 months;

3. Balance on hand as of October 7, 2024 = $2,427.79;

4. Class 1 claim of US Bank is reduced to the amounts already paid by the Trustee for on-going, pre and post petition.

Fourth Amended Plan, Docket 129. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

Debtor and creditor U.S. Bank. N. A. ("Creditor") filed a Stipulation on October 14, 2024. Docket 136. The Stipulation proposes the following language in the Order confirming:

> Due to payment by payment to Creditor under the California Mortgage Relief program ("HAF"), Creditor states that the subject loan is contractually current through September 30, 2024 due to receipt of $71,698.12 from HAF and $4,672.74 from the Chapter 13 Trustee for post-petition payments; no payments have been received from the Chapter 13 Trustee for pre-petition arrears. Creditor shall timely amend the pre•petition arrears amount stated in its Proof of Claim, filed as Claim No. 2 on the Claims Register herein on November 22, 2023, to reflect pre-petition arrears of $4,672.74 and which represents the amounts already paid by the Chapter 13 Trustee as this was included when calculating the HAF proceeds such that Creditor remains entitled to retain the funds.

Stip. 2:7-13, Docket 136.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on November 5, 2024. Docket 141. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor is delinquent one payment of $420.

DISCUSSION
Delinquency

Debtor is $420 delinquent in plan payments, which represents one month of the plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

At the hearing, **xxxxxxx**

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor Tema Kay 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 Confirm the Amended Plan is denied, and the proposed Chapter 13 Plan is not confirmed.~~

6.	**23-23608-E-13** **DPC-2**	**TEMA ROBINSON** **Peter Macaluso**	**CONTINUED MOTION TO DISMISS CASE** **9-6-24 [121]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on October 4, 2024. By the court's calculation, 40 days' notice was provided. 14 days' notice is required.

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

The Motion to Dismiss is xxxxxxx.

November 21, 2024 Hearing

The court continued the hearing on this Motion to be conducted in conjunction with the Motion to Confirm Debtor's Fourth Amended Plan. The court has tentatively denied that Motion as Debtor is delinquent in plan payments. A review of the Docket on November 18, 2024 reveals nothing new has been filed under this Docket Control Number. At the hearing, xxxxxxx

REVIEW OF MOTION

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

1. The debtor, Tema Kay Robinson ("Debtor"), is delinquent $700 in plan payments. Docket 121.

2. Debtor's Motion to Confirm a third amended Plan was denied by the Court on July 16, 2024, (DN 120). Debtor has failed to file a fourth amended Plan and set a hearing for confirmation. *Id.* at 2:3-6.

Trustee submitted the Declaration of Trina Hayek to authenticate the facts alleged in the Motion. Decl., Docket 123.

DEBTOR'S RESPONSE

Debtor filed a Response and supporting Declaration on October 7, 2024. Dockets 133, 134. Debtor states she has set for hearing the confirmation of a fourth Amended Plan for November 19, 2024.

DISCUSSION
Delinquent

Debtor is $700 delinquent in plan payments, which represents multiple months of the $350 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Fourth Amended Chapter 13 Plan

Debtor has filed a Fourth Amended Plan and supporting evidence. Dockets 125-132. The Motion (Dckt. 125) appears to state grounds with particularity, and Debtor's Declaration (Dckt. 127) appears to provide personal knowledge factual testimony (but also her legal opinion that she believes her Plan complies with the Bankruptcy Code).

The Chapter 13 Trustee has filed an Opposition to confirmation of the Fourth Amended Plan, stating that the Debtor is delinquent one payment of $420.00. Dckt. 141.

The hearing on the Motion to Dismiss is continued to 2:00 p.m. on November 19, 2024, to be conducted in conjunction with the hearing on the Motion to Confirm the Fourth Amended Plan.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion to Dismiss is **xxxxxxx**.

7. 24-23415-E-13 PARAMJIT DHALIWAL MOTION TO DISMISS CASE
MFC-2 Douglas Jacobs 11-1-24 [34]

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 not Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor on November 1, 2024. By the court's calculation, 18 days' notice was provided. 14 days' notice is required. Debtor's attorney, the Chapter 13 Trustee, or the U.S. Trustee were not served a copy of these pleadings. At the hearing, **xxxxxxx**

The Motion to Dismiss 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 Dismiss is ~~denied without prejudice.~~

Archers Capital Group, Inc. ("Creditor"), seeks dismissal of the case on the basis that:

1. The debtor, Paramjit Kaur Dhaliwal ("Debtor"), has not prosecuted this case since the court sustained Creditor's Objection to the previous Plan on October 9, 2024 at Docket 33. Mot. 2:21-26, Docket 34.

2. A refinance is not possible, so the Plan is not feasible. *Id.* at 3:3-10.

Creditor submitted the Declaration of Michael F. Chekian to authenticate the facts alleged in the Motion. Decl., Docket 36.

DISCUSSION
Prior Plan Denied, No New Plan

Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on October 9, 2024. A review of the docket shows that Debtor has not

yet filed a new plan or a motion to confirm a plan. Movant argues failing to file a new Plan or submit other required documents is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

However, the case was filed on August 1, 2024. The case is relatively young in its inception with the prior Plan only being denied confirmation on October 9, 2024. The court does not necessarily find that failing to file an Amended Plan at this time amounts to unreasonable delay where Debtor's case is still young.

Moreover, Debtor's prior Plan, which was denied, called for the refinance. There is no evidence that the Debtor intends to include the same term in an Amended Plan. This argument is not relevant for purposes of considering the Motion.

The Chapter 13 Trustee's November 8 Docket Entry Report states that the Debtor and Debtor's counsel did not appear at the continued 341 Meeting on November 7, 2024.

If Creditor believes it is entitled to enforce its rights against Debtor's property and property of the Estate for lack of postpetition payments on its claim, it may seek to do so through a Motion for Relief from Stay as dismissal may not be warranted at this time.

~~Based on the foregoing, cause does not exist to dismiss this case. The Motion is denied without prejudice.~~

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss the Chapter 13 case filed by Archers Capital Group, Inc. ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to ~~Dismiss is denied without prejudice~~.

8. **24-24029-E-13 DPC-1** | **SANDRA BROWN/MICHAEL TIBBETTS** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK**

Michael Hays | **10-23-24 [24]**

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

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 23, 2024. 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.

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

1. Debtor Sandra Ann Brown and Michael Dean Tibbetts ("Debtor") appear to improperly attempt to use the Ensminger Provisions, failing to provide for what would occur in the event of a default if payments are not made. Obj. 2:3-17, Docket 24.

2. The monthly adequate protection payments pending sale are $40 deficient per month. *Id.* at 2:18-25.

3. Debtor has not provided the business attachment in response to Schedule I line 8. *Id.* at 2:26-3:4.

4. Debtor has failed to provide certain 11 U.S.C. § 521 business documents. *Id.* at 3:5-15.

Trustee submits the Declaration of Teryl Wegemer to authenticate the facts alleged in the Objection. Decl., Docket 26.

Debtor's Response

On November 14, 2024, Debtor filed a Response to the Trustee's Objection. Dckt. 28. The Response says to read the Clancy Callahan's Declaration for how it is asserted that the Trustee's Objections have been addressed. It further states that the Debtor are able to increase the monthly Plan payment by $40.

Mr. Callahan is identified as the office manager for Debtor's counsel. Dec., p. 2:2-3; Dckt. 29. Counsel's Office Manager first states that the proposed payment of $3,200.00 to Creditor Treadway is the regular amount called for on the amortization schedule. Mr. Callahan does not state how he has personal knowledge of such fact.

Mr. Callahan then testifies that he did not attend the 341 Meeting, but that he has Heard Debtor's Counsel Say what the Debtors testified to at the 341 Meeting. *Id*.; p. 2:14-20.

With respect to the Ensminger Provisions, Mr. Callahan then contains to Hear What Debtor's Counsel Said about the plan payment amounts. *Id*.; p. 2:4-11.

With respect to the Business Income and Expense Statement, Mr. Callahan testifies as to what he Heard Debtor's Counsel Say to Mr. Callahan about the expenses. *Id*.; p. 2:12-24.

Mr. Callahan does testify that he was filing the Business Questionnaire on November 14, 2024. *Id*.; p. 2:24-25.

DISCUSSION

Nonstandard Provisions

Trustee objects on the basis that the Nonstandard Provisions do not include all factors a court would look for in approving Nonstandard Provisions. Trustee is not clear on what is lacking, whether it be the lack of Proof of Claim in the case or some other defect. Trustee does not cite to case or rule authority to support his position that courts look for those specific factors.

The Nonstandard Provisions clearly identify the creditor and the amount to be paid, but they do not account for an event of default.

With respect to the monthly Plan payment, it states that Debtor will make a payment of $3,431.00 commencing October 25, 2024, which is to be done what Debtor is attempting to sell a non-residential portion of the Property. Plan, § 7 Nonstandard Provisions, first paragraph. Dckt. 12.

The second, and last, paragraph of the Nonstandard Provisions says that Debtor expects to close a sale no later than March 15, 2025, but as written, this payment scheme would go into infinity.

Moreover, Trustee estimates the monthly payment is a bit shy of the required amount to make the Plan work.

At the hearing, **xxxxxxx**

Failure to File Documents Related to Business

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

A. Questionnaire,
B. Six months of profit and loss statements,
C. Six months of bank account statements for Pacific Crest Federal Credit Union, and

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.

Failure to File Business Documents Required by Schedule I

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

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.

9. 24-21736-E-13 EJS-1 | **TAD SAMPSON** / **Eric Schwab** | **CONTINUED MOTION TO AVOID LIEN OF DAVID REMY AND/OR MOTION TO AVOID LIEN OF CHERY REMY**

Item 9 thru 10 | **8-15-24 [26]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 15, 2024. By the court's calculation, 54 days' notice was provided. 28 days' notice is required.

The Motion to Avoid Judicial Lien 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 Avoid Judicial Lien is xxxxxxx.

November 19, 2024 Hearing

The court continued the hearing on this Motion to conduct a Scheduling Conference, the parties determining such may be necessary in resolving the Motion. A review of the Docket on November 15, 2024 reveals nothing new has been filed with the court.

At the hearing, **xxxxxxx**

REVIEW OF THE MOTION

This Motion requests an order avoiding the judicial lien of David Remy and Chery Remy ("Creditor") against property of the debtor, Tad Spencer Sampson ("Debtor") commonly known as 21020 Forest Lake Place, Weimar, Ca 95736 ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $176,752.72. Exhibit c, Dckt. 29. An abstract of judgment was recorded with Placer County on August 1, 2023, that

encumbers the Property. *Id.* Creditor has filed a proof of claim asserting the judgment has grown to $265,700.26. POC 2-1.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $800,000 as of the petition date. Schedule A at 11, Docket 1. The unavoidable consensual liens that total $444,855 as of the commencement of this case are stated on Debtor's Amended Schedule D. Am. Schedule D at 5, Docket 33. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $659,625 on Schedule C. Schedule C at 17, Docket 1.

CREDITOR'S OPPOSITION

On August 23, 2024, Creditor in *pro se*, filed an Opposition to the Motion. Docket 41. Creditor states:

1. The value of the Property is actually $1,248,667, based on comparable properties.

2. Creditor is willing to negotiate its lien amount down to $144,547, and given the higher value of the Property, this lien amount will not affect Debtor's exemption.

DEBTOR'S REPLY

Debtor filed a Reply on October 2, 2024. Docket 49. Debtor states the Opposition should be rejected as Creditor has not submitted any admissible evidence in support of their Opposition.

DISCUSSION
Failure To Provide Evidence

Creditor filed an Opposition making several factual assertions. However, no declaration of the individual creditors or other evidence was filed to support those assertions.

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). Creditor has not submitted any authenticated evidence in support of its valuation of the Property, such as an appraisal report and accompanying Declaration from an appraiser. Failure to comply with the Local Rules is grounds for rejection of the Opposition. LOCAL BANKR. R. 1001-1(g).

At the hearing, the court addressed with the Parties the evidence presented and the information necessary for the court to make the required findings of fact. Counsel for the Debtor reported that the County has recently reduced the value of the Property, consistent with the Debtor's opinion, based on an appraisal, and counsel could provide such appraisal and testimony of the appraiser.

The court addressed with the Creditor, who were appearing in *pro se*, the obligations of a party to provide proper evidence and comply with the law and procedures in federal court. The court discussed with Creditor the issue of why they did not have counsel for what they asserted to be such a valuable claim.

The Parties agreed to a continuance so that they could meet and confer over these issues, including the value of the Property. They discussed the possibility of jointly engaging an independent appraiser/Realtor as an expert to provide an opinion as to the value of the Property. Counsel for the Debtor will transmit the appraisal report from the County's appraiser to Creditor.

The hearing is continued to 2:00 p.m. on November 19, 2024, for scheduling conference

ISSUANCE OF A COURT-DRAFTED ORDER

An order substantially in the following form shall be prepared and issued by the court:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Tad Spencer Sampson ("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 Avoid Judicial Lien is **xxxxxxx**.

10. 24-21736-E-13 EJS-2 | **TAD SAMPSON** / **Eric Schwab** | **CONTINUED MOTION TO CONFIRM PLAN** **8-15-24 [35]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 15, 2024. By the court's calculation, 54 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is xxxxxxx.

November 19, 2024 Hearing

The court continued the hearing on this Motion to be conducted in conjunction with the Scheduling Conference regarding the Motion to Avoid Judicial Lien. A review of the Docket on November 15, 2024 reveals nothing new has been filed with the court. At the hearing, **xxxxxxx**

REVIEW OF THE MOTION

The debtor, Tad Spencer Sampson ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for 60 monthly payments of $6,416 with a 10% dividend to unsecured creditors, and Debtor will contribute any amount of tax refunds in excess of $2,000 to the Plan as well. Amended Plan, Docket 39. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CREDITOR'S OPPOSITION

David Remy and Chery Remy ("Creditor") filed an Opposition on October 2, 2024. Docket 51. Creditor opposes confirmation of the Plan on the basis that Debtor is not prosecuting this case in good faith, like Debtor's Chapter 7 Case that closed on August 26, 2014. *See* Case no. 12-40213.

DEBTOR'S REPLY

Debtor filed a Reply on October 2, 2024. Docket 51. Debtor states the Opposition should be rejected as Creditor has not submitted any admissible evidence in support of their Opposition.

DISCUSSION
Failure To Provide Evidence

Creditor filed an Opposition making several factual assertions. However, no declaration of the individual creditors or other evidence was filed to support those assertions.

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). Creditor has not submitted any authenticated evidence in support of its Opposition, such as any Declaration alleging particular facts of bad faith or misconduct occurring in the present case. Failure to comply with the Local Rules is grounds for rejection of the Opposition. LOCAL BANKR. R. 1001-1(g).

The Chapter 13 Trustee, David Cusick ("Trustee"), has not objected. However, Debtor's Declaration in support of confirmation at Docket 37 lacks detailed, factual testimony where the court can find the Plan complies with the requirements of 11 U.S.C. §§ 1322, 1323, and 1325(a).

At the hearing, the Parties agreed to continue the hearing on the Motion to Confirm in light of the Debtor's Motion to Avoid Judicial Lien having been continued for a Scheduling Conference to allow the Parties to meet and confer concerning the value of the Property.

The hearing on the Motion to Confirm the Amended Plan is continued to 2:00 p.m. on November 19, 2024, to be conducted in conjunction with the Scheduling Conference on the Motion to Avoid Judicial Lien.

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, Tad Spencer Sampson ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Confirm the Amended Plan is **XXXXXXX**.

11. 24-24438-E-13 MC-1 | **SEAN LAURANT** / **Muoi Chea** | **MOTION TO VALUE COLLATERAL OF INTERNAL REVENUE SERVICE** / **10-22-24 [21]**

Item 11 thru 13

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—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, parties in interest, Creditor, and Office of the United States Trustee on October 22, 2024. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured ~~Claim of the Internal Revenue Service is granted, and Creditor's secured claim is determined to have a value of $4,487, and the balance as an unsecured claim~~.

The Motion filed by Sean Romeo Laurant ("Debtor") to value the secured claim of the Internal Revenue Service ("IRS" or "Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 23. Debtor seeks in this Motion to value IRS' secured claim (senior tax lien) which was stated to be $19,822.01, for which a tax lien recorded with the Solano Country Recorder's Office under Document no. 201500080087 ("Claim"). *See* Ex. C, Docket 24. Debtor is the owner of the following items of personal property that may be encumbered by the IRS lien (Debtor owns no real property):

Property	Fair Market Value	Secured Claim	Equity Available
2019 Chevrolet Tahoe	$29,320.00	$42,300.00	$0.00
2019 Harley Davidson	$6,910.00	$8,423.00	$0.00

2005 Ski Supreme	$12,620.00	$17,000.00	$0.00
Household goods/furnishings	$2,000.00	$0.00	$2,000.00
Electronics	$1,000.00	$0.00	$1,000.00
Wearing apparel	$400.00	$0.00	$400.00
Mixed breed dog	$0.00	$0.00	$0.00
Cash	$20.00	$0.00	$20.00
Bank Deposits	$67.00	$0.00	$67.00
Security Deposits	$1,000.00	$0.00	$1,000.00
Term Life Insurance	$0.00	$0.00	$0.00
Total:			$4,487.00

Decl. ¶ 9, Docket 23; Schedule A/B at 3-8, Docket 13; Am. Schedule D at 1-3, Docket 33 ("Property").

Debtor seeks to value the Property at a replacement value of $53,337 as of the petition filing date before deducting the consensual liens. However, after subtracting the value of the consensual liens, there remains only $4,487 in non-exempt equity. 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).

The Chapter 13 Trustee filed a Nonopposition on November 5, 2024. Docket 38.

No Proof of Claim Filed

The IRS has not yet filed a Proof of Claim in the case. Debtor has not filed a proof of claim for the IRS. 11 U.S.C. § 506(a) provides that an "allowed secured claim" of a creditor may be valued. 11 U.S.C. § 502(a) states a claim is deemed allowed if a proof of claim has been filed as provided in 11 U.S.C. § 501. Though Federal Rule of Bankruptcy Procedure 3003(b) provides that in a Chapter 9 or Chapter 11 case a claim listed on the Schedules as undisputed is deemed allowed, such a provision does not exist for Chapter 13 cases.

There being no proof of claim filed, there is no "allowed claim" to be valued pursuant to 11 U.S.C. § 506(a) at this time.

At the hearing, **xxxxxxx**

~~Upon review of the evidence, the court determines the value of the secured claim to be $4,487.00, with the balance to be treated as unsecured claims (whether priority or general unsecured claims).~~

~~The Motion 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 Sean Romeo Laurant ("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 secured claim of the Internal Revenue Service is determined to be a secured claim in the amount of $4,487.00, for which which the lien is perfected by the Notice of Tax Lien recorded with the Solano Country Recorder's Office under Document no. 201500080087 ("Claim") of the Internal Revenue Service ("IRS" or "Creditor"), which claim is secured by the following assets in the specified amounts:~~

~~**Property**~~	~~**IRS Secured Claim Encumbering the Personal Property Available**~~
~~Household goods/furnishings~~	~~$2,000.00~~
~~Electronics~~	~~$1,000.00~~
~~Wearing apparel~~	~~$400.00~~
~~Cash~~	~~$20.00~~
~~Bank Deposits~~	~~$67.00~~
~~Security Deposits~~	~~$1,000.00~~
~~Total:~~	~~$4,487.00~~

~~and the balance of the claim is an unsecured claim (whether priority or general unsecured claim not now determined by the court) to be paid through the confirmed bankruptcy plan.~~

12. 24-24438-E-13 MC-2 | **SEAN LAURANT** **Muoi Chea** | **MOTION TO VALUE COLLATERAL OF INTERNAL REVENUE SERVICE 10-22-24 [16]**

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—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, parties in interest, Creditor, and Office of the United States Trustee on October 22, 2024. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of the Internal Revenue Service is granted, and Creditor's secured claim is determined to have a value of $0.

The Motion filed by Sean Romeo Laurant ("Debtor") to value the secured claim of the Internal Revenue Service ("IRS" or "Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 23. Debtor seeks in this Motion to value IRS' junior tax lien in the amount of $10,000, recorded with the Solano County Recorder's Office under Document no. 201600110339 ("Claim"). See Ex. D, Docket 19. Debtor is the owner of the following items of personal property that may be encumbered by the IRS lien (Debtor owns no real property):

Property	Fair Market Value	Secured Claim	Equity Available
2019 Chevrolet Tahoe	$29,320.00	$42,300.00	$0.00
2019 Harley Davidson	$6,910.00	$8,423.00	$0.00
2005 Ski Supreme	$12,620.00	$17,000.00	$0.00

Household goods/furnishings	$2,000.00	$0.00	$2,000.00
Electronics	$1,000.00	$0.00	$1,000.00
Wearing apparel	$400.00	$0.00	$400.00
Mixed breed dog	$0.00	$0.00	$0.00
Cash	$20.00	$0.00	$20.00
Bank Deposits	$67.00	$0.00	$67.00
Security Deposits	$1,000.00	$0.00	$1,000.00
Term Life Insurance	$0.00	$0.00	$0.00
Total:			$4,487.00

Decl. ¶ 9, Docket 23; Schedule A/B at 3-8, Docket 13; Am. Schedule D at 1-3, Docket 33 ("Property"). Debtor seeks to value the Property at a replacement value of $53,337 as of the petition filing date before deducting the consensual liens and senior.

However, after subtracting the value of the consensual liens, there remains only $4,487 in non-exempt equity.

Furthermore, after deducting the value of the IRS' senior lien in the amount of $19,822.01, there remains $0 in equity for the junior lien to attach. 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).

The Chapter 13 Trustee filed a Nonopposition on November 6, 2024. Docket 47.

No Proof of Claim Filed

The IRS has not yet filed a Proof of Claim in the case. Debtor has not filed a proof of claim for the IRS. 11 U.S.C. § 506(a) provides that an "allowed secured claim" of a creditor may be valued. 11 U.S.C. § 502(a) states a claim is deemed allowed if a proof of claim has been filed as provided in 11 U.S.C. § 501. Though Federal Rule of Bankruptcy Procedure 3003(b) provides that in a Chapter 9 or Chapter 11 case a claim listed on the Schedules as undisputed is deemed allowed, such a provision does not exist for Chapter 13 cases.

There being no proof of claim filed, there is no "allowed claim" to be valued pursuant to 11 U.S.C. § 506(a) at this time.

At the hearing, **xxxxxxx**

~~Upon review of the evidence, the court determines the value of the secured claim to be $0, with the balance to be treated as unsecured claims (whether priority or general unsecured claims).~~

~~The Motion 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 Sean Romeo Laurant ("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 junior tax lien in the amount of $10,000, recorded with the Solano County Recorder's Office under Document no. 201600110339 ("Claim") of the Internal Revenue Service ("IRS" or "Creditor") is determined to be a secured claim in the amount of $0, and the balance of the claim is an unsecured claim (whether priority or general unsecured claim) to be paid through the confirmed bankruptcy plan. After deducting the value of the IRS' senior lien in the amount of $19,822.01, there is $0 in equity in the Property for the junior lien to attach.~~

13. 24-24438-E-13 MC-3 | **SEAN LAURANT** **Muoi Chea** | **MOTION TO VALUE COLLATERAL OF MEDALLION BANK** **10-22-24 [26]**

Final Ruling: No appearance at the November 19, 2024 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, parties in interest, Creditor, and Office of the United States Trustee on October 22, 2024. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Medallion Bank ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $12,620.

The Motion filed by Sean Romeo Laurant ("Debtor") to value the secured claim of Medallion Bank ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 28. Debtor is the owner of a 2005 Ski Supreme V220 ("Property"). Debtor seeks to value the Property at a replacement value of $12,620 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).

The Chapter 13 Trustee filed a Nonopposition on November 6, 2024. Docket 46.

The lien on the Property secures a purchase-money loan incurred on August of 2015, which is more than one year prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $17,000. Declaration ¶ 4, Dckt. 28. Therefore, Creditor's claim secured by a lien against the Property is under-collateralized. Creditor's secured claim is determined to be in the amount of $12,620, 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 Sean Romeo Laurant ("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 Medallion Bank ("Creditor") secured by an asset described as 2005 Ski Supreme V220 ("Property") is determined to be a secured claim in the amount of $12,620, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $12,620 and is encumbered by a lien securing a claim that exceeds the value of the asset.

14. 24-24242-E-13 RPH-1 | **MICHAEL/MERCEDES HICKEY** **Robert Huckaby** | **MOTION TO VALUE COLLATERAL OF REAL TIME RESOLUTIONS** **10-20-24 [17]**

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 Creditor, Chapter 13 Trustee, and Office of the United States Trustee on October 20, 2024. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

At the hearing, **xxxxxxx**

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

The Motion to Value Collateral and Secured Claim of Real Time Resolutions ("Creditor") is xxxxxxx.

The Motion to Value filed by Michael James Hickey and Mercedes Velasquez Hickey ("Debtor") to value the secured claim of Real Time Resolutions ("Creditor") is accompanied by Debtor's declaration. Declaration, Docket 19. Debtor is the owner of the subject real property commonly known as House at 2303 Wasabe Drive, South Lake Tahoe, CA ("Property"). Debtor seeks to value the Property at a fair market value of $$800,000 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The Chapter 13 Trustee filed a Nonopposition on November 5, 2024. Docket 23.

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

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

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

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

OPPOSITION

Creditor filed an Opposition. Docket 21. Creditor requests time to obtain an appraisal, arguing that the home is worth more than $800,000 and at least partially secures its claim, so the claim should not be reduced to $0.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $809,396. Schedule D 20, Docket 1. Creditor's deed of trust secures a claim with a balance of approximately $128,095. *Id*. at 21. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized, if Debtor's valuation is correct. However, Creditor has a right to obtain its own independent appraisal (conduct discovery) of the Property.

At the hearing, **xxxxxxx**

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Collateral and Secured Claim filed by Michael James Hickey and Mercedes Velasquez Hickey ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is **xxxxxxx**.

15. 24-20654-E-13 PLC-3 | **MICHAEL BETTENCOURT** **Peter Cianchetta** | **MOTION FOR COMPENSATION FOR PETER CIANCHETTA, DEBTORS ATTORNEY(S)** **10-18-24 [69]**

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 Creditors and parties in interest, Chapter 13 Trustee, and Office of the United States Trustee on October 18, 2024. By the court's calculation, 32 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). Movant is three days late of the required notice period. At the hearing, **xxxxxxx**

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

The Motion for Allowance of Professional Fees is xxxxxxx.

Peter Cianchetta, the Attorney ("Applicant") for Michael Joseph Bettencourt, ("Debtor," "Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case. The court confirmed the Amended Plan on September 13, 2024, where Debtor opted out of the no-look fee provision. Plan, Docket 49.

Fees are requested for the period February 6,2 024, through October 15, 2024. Applicant requests fees in the amount of $8,500.00 and costs in the amount of $407.68.

TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on November 5, 2024. Docket 79. Trustee opposes on the following grounds:

1. The Court granted the Debtor's Motion to confirm the Amended Plan on September 13, 2024. The Debtor's Attorney has failed to submit an Order Confirming Plan to the Trustee for approval to date. *Id.* at 1:23-25.

2. Trustee is not clear on the amount of fees and costs actually requested. Applicant requests $8,907.68 in fees and costs but also mentions Debtor paid $150 prepetition, and it is not clear if that amount has been properly accounted for. *Id.* at 1:26-2:5.

3. The application fails to state if the fees and costs will be paid through the Plan or by the Debtor directly. *Id.* at 2:7-8.

4. Trustee disputes the contention that making this Application is worth three hours of billing time as Applicant suggests. *Id.* at 2:9-18.

5. Debtor has not filed a declaration in support of the application. *Id.* at 2:19-21.

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 administering the case and bringing it to confirmation. ~~The court finds the services were beneficial to Client and the Estate and were reasonable.~~

In addressing Trustee's concerns, at the hearing, **xxxxxxx**

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 12.5 hours in this category.

Motion to Confirm: Applicant spent 3.3 hours in this category.

This Application: Applicant spent 3 hours in this category.

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**
Peter Cianchetta	18.8	$450.00	$8,460.00
Total Fees for Period of Application			$8,460.00

Where the Motion requests fees of $8,500 but the amount earned is $8,460, at the hearing, **xxxxxxx**

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $407.68 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Printing and Postage		$49.68
Credit Reports	$45.00	$45.00
Chapter 13 filing fee	$313.00	$313.00
Total Costs Requested in Application		$407.68

The fees requested appear to not include the $150 Debtor paid at the outset of the case. At the hearing, **xxxxxxx**. Therefore, fees in the amount of $257.68 are awarded.

FEES AND COSTS & EXPENSES ALLOWED

Fees
Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $8,460 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case.

Costs & Expenses

First and Final Costs in the amount of $257.68 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case.

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

Fees	$8,460
Costs and Expenses	$257.68

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Peter Cianchetta, the Attorney ("Applicant") for Michael Joseph Bettencourt, ("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 Peter Cianchetta is allowed the following fees and expenses as a professional of the Estate:~~
>
> ~~Peter Cianchetta, Professional employed by Chapter 13 Debtor~~
>
> ~~Fees $8,460~~
> ~~Costs and Expenses $257.68,~~
>
> ~~as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for Chapter 13 Debtor .~~
>
> **IT IS FURTHER ORDERED** that the Chapter 13 Trustee is authorized to pay the fees and costs allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case.

16. 24-24160-E-13 DPC-1 | **MAI TRANG LE/NHAT TRAN** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK**

Peter Macaluso | **11-4-24 [24]**

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

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 November 4, 2024. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

1. Debtor Mai Trang Tracy Le and Nhat Van Tran ("Debtor") has not amended her Schedule I to account for her mother's contributions. Obj. 2:7-12, Docket 24.

2. Debtor has failed to provide 11 U.S.C. § 521 business documents. *Id.* at 2:13-20.

Trustee submits the Declaration of Trina Hayek to authenticate the facts alleged in the Objection. Decl., Docket 26.

DISCUSSION

Failure to File Documents Related to Business

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

A. Two years of tax returns,
B. Six months of profit and loss statements,
C. Six months of bank account statements, and
D. 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.

Inaccurate or Missing Information

Debtor's Schedules I contains outdated or inaccurate information. Trustee informed Debtor of the need to amend the Schedule I to account for Debtor's mother's monthly $1,000 contribution, but to date, it has not been amended. Without an accurate picture of debtor's financial reality, the court is unable to determine if the Plan is confirmable. *See* 11 U.S.C. § 1325(a)(6).

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

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

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

17. 24-24165-E-13 DPC-1 | **BUOI/JASMINE NGUYEN Cindy Hill** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK 10-31-24 [20]**

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) 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 31, 2024. 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.

The Objection to Confirmation of Plan is overruled.

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

1. Debtor Buoi Nguyen and Jasmine Nguyen's ("Debtor") Plan provides for an annual bonus to be paid into the Plan in the amount of $12,000.00 upon receipt, . In addition, Debtor's Schedule I provides for additional monthly income in the amount of $1,000.00 derived from estimated bonus pay. At the First Meeting of Creditors on October 24, 2024, the Trustee requested Debtor's amend their Schedule I to remove this additional monthly income as it appears to be double counted in their budget as well as an additional plan payment and it is not feasible to be both. Obj. 2:7-14, Docket 20.

Trustee submits the Declaration of Trina Hayek to authenticate the facts alleged in the Objection. Decl., Docket 22.

Debtor field a response on November 12, 2024, informing the court and Trustee she has accommodated Trustee and filed the proper Amended Schedule I in accordance with Trustee's recommendation. Docket 25.

DISCUSSION

A review of the Docket shows Debtor has filed the Amended Schedule I at Docket 24, addressing the Trustee's concerns.

At the hearing, **xxxxxxx**

The Objection is overruled.

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 is overruled, and Buoi Nguyen and Jasmine Nguyen's ("Debtor") Chapter 13 Plan filed on September 18, 2024, is confirmed as amended to state that Debtor Boui Nguyen's year-end bonus, if any, shall be paid over to the Trustee in January of each year. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

18. 24-22985-E-13 DPC-2 | **ALLISON HINGST ELO, Pro Se** | **OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS, 10-16-24 [33]**

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 (*pro se*) on October 16, 2024. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Objection to Claimed Exemptions 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 Objection to Claimed Exemptions is sustained, and the exemptions are disallowed in their entirety.

David Cusick ("the Chapter 13 Trustee") objects to Allison Marie Hingst Elo's ("Debtor") claimed exemptions under California law because Debtor claimed 100% of fair market value, instead of claiming specific dollar amounts. California Code of Civil Procedure § 703.140 does not allow claiming 100% of fair market value and requires the claimant to list actual values.

A review of Debtor's Schedule C shows that real dollar amounts have not been claimed. Moreover, Debtor has not cited to any specific code sections in claiming property as exempt. The Chapter 13 Trustee's Objection is sustained, and the claimed exemptions are disallowed.

At the hearing, **xxxxxxx**

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

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

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

IT IS ORDERED that Objection is sustained, and the claimed exemptions for the real property commonly known as 3335 Sacramento Dr., Redding, Ca 96001, a 2019 Chevrolet Equinox, and personal property all listed in Schedule C at Docket 1, are disallowed in their entirety.

19. 24-22488-E-13 JMF-1 | **STEVEN/DEBBIE NOMMSEN** **Jacob Faircloth** | **CONTINUED AMENDED MOTION TO CONFIRM PLAN** **9-12-24 [39]**

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

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

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

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

The Motion to Confirm the Amended Plan is xxxxxxx.

November 19, 2024 Hearing

The court continued this hearing to allow Shellpoint Mortgage to get its amended proof of claim on file showing there is no prepetition arrearage. A review of the Docket on November 15, 2024 reveals no amended Proof of Claim has been filed.

At the hearing, **xxxxxxx**

REVIEW OF MOTION

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

CHAPTER 13 TRUSTEE'S OPPOSITION

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

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

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

DEBTOR'S REPLY

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

DISCUSSION

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

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

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

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

Amd. Plan, ¶ 3.10; Dckt. 36.

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

Review of Proof of Claim 5-1

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

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

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

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

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

At the hearing, counsel for the Debtor reported that Debtor is current on all post-petition payments. Additionally, counsel for Shellpoint Mortgage will be filing an amended proof of claim showing that there is no pre-petition arrearage.

The Plan is amended, to provide for the Shellpoint Mortgage secured claim as only a Class 4 Claim.

The hearing is continued to 2:00 p.m. on November 19, 2024, to allow the Shellpoint Mortgage to get the amended proof of claim on file.

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

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

the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Confirm the Amended Plan is **XXXXXXX**.

FINAL RULINGS

20. 23-24590-E-13 DRE-4 | **JON FENTON** | **MOTION TO VALUE COLLATERAL OF KAPITUS SERVICING, INC.**
Randall Ensminger | **9-25-24 [97]**

Final Ruling: No appearance at the November 19, 2024 hearing is required.

The court issued an Order on November 6, 2024, granting Debtor's *ex parte* Motion to Continue the hearing to December 10, 2024, to cure a defect in service. Order, Docket 125.

The Hearing on the Motion to Value shall be conducted on December 10, 2024 at 2:00 p.m.

21. 24-20591-E-13 ALG-1 | **PABLO SILVA** / **Carl Gustafson** | **MOTION TO DISMISS CASE** / **10-18-24 [74]**

Final Ruling: No appearance at the November 19, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors and parties in interest, and Office of the United States Trustee on October 18, 2024. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss is granted, and the case is dismissed.

Brian Stewart Weiss, Trustee of the Brian Stewart Weiss Revocable Trust dated October 21, 2021 ("Movant"), seeks dismissal of the case on the basis that:

1. The debtor, Pablo Efrain Silva ("Debtor"), is delinquent $12,700.00 in plan payments, with an additional payments of $4,500 due prior to the hearing. Mot. 2:9-15, Docket 74.

Movant submitted the Declaration of Jeff LaMotteto authenticate the facts alleged in the Motion. Decl., Docket 76.

DISCUSSION

Delinquent

Debtor is $12,700.00 delinquent in plan payments, which represents multiple months of the $3,600 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss the Chapter 13 case filed by Brian Stewart Weiss, Trustee of the Brian Stewart Weiss Revocable Trust dated October 21, 2021 ("Movant"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Dismiss is granted, and the case is dismissed.

22. 24-22016-E-13 **VICTOR JUDD**
Dana Douglas

MOTION FOR COMPENSATION FOR DANA M. DOUGLAS, DEBTORS ATTORNEY(S)
10-21-24 [36]

DEBTOR DISMISSED: 06/25/24

Final Ruling: No appearance at the November 19, 2024 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor on November 3, 2024. By the court's calculation, 16 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). However, the court issued an order specially permitting this Motion to be noticed pursuant to Local Bankruptcy Rule 9014-1(f)(1). Order, Docket 45.

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

The Motion for Allowance of Professional Fees is granted.

The Motion comes before the court today as the case of debtor Victor LaMont Judd ("Debtor," "Client") resulted in an early voluntary dismissal, and Chief Judge Clement ordered applicant, Debtor's attorney Dana M. Douglas ("Applicant"), to file a Motion to Approve fees accepting the $1,500 retainer. Order, Docket 22.

Fees are requested for the period May 10, 2024, through the dismissal date of June 25, 2024. Applicant requests authorization to accept fees in the amount of $1,500, which is a reduced amount from the fees earned of $2,100. Applicant does not request the reimbursement for any costs.

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

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

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

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

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

A review of the application shows that Applicant's services for the Estate include filing the necessary documents in this case to halt an impending foreclosure sale. According to Applicant, she was preparing the necessary filings in the case when her client informed her that he had another way to address the impending foreclosure, asking Applicant to dismiss the case. Mot. 4:22-5:2, Docket 36. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND REQUESTED

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**
Dana M. Douglas	7	$300.00	$2,100.00
Total Fees Requested for Period of Application			$1,500.00

FEES ALLOWED
Fees

Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $1,500 are approved pursuant to 11 U.S.C. § 330, and Applicant is authorized to apply the prepetition retainer toward this fee amount.

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

Fees $1,500

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

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

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

The Motion for Allowance of Fees and Expenses filed by Dana M. Douglas ("Applicant"), Attorney for Victor LaMont Judd ("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 Dana M. Douglas is allowed the following fees and expenses as a professional of the Estate:

Dana M. Douglas, Professional employed by the Chapter 13 Debtor

Fees in the amount of $1,500,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for Chapter 13 Debtor.

IT IS FURTHER ORDERED that Applicant is authorized to apply the prepetition retainer in the amount of $1,500 toward the approved fee amount of $1,500.

23. 23-24318-E-13 DJC-1 | **FRANK TOVAR** Diana Cavanaugh | **OBJECTION TO CLAIM OF WELLS FARGO BANK, N.A., CLAIM NUMBER 7** **9-23-24 [24]**

Final ruling: No Appearance at the November 19, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on creditors that have filed claims on September 23, 2024. By the court's calculation, 57 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

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

The Objection to Proof of Claim Number 13-1 of Wells Fargo Bank, N.A. is sustained, and the claim is disallowed as a secured claim, and is determined to be a general unsecured claim in its entirety.

Frank William Tovar, Chapter 13 Debtor, ("Objector") requests that the court disallow the claim of Wells Fargo Bank, N.A. ("Creditor"), Proof of Claim No. 7-1 ("Claim"), Official Registry of Claims in this case, as a secured claim, but to be allowed only as a general unsecured claim. The Claim is asserted to be secured in the amount of $2,792.69.

Objector asserts that Creditor has not properly shown that the Claim is perfected, and so the Claim should be disallowed. Objector cites to rules of perfection of a secured claim, including perfecting a fixture, under applicable state law to show why the claim should be disallowed.

However, Objector has not discussed the difference between perfection and there being the existence of a lien. UCC 9-334(d), the section of the UCC dealing in perfection of fixtures, states:

> Except as otherwise provided in subsection (h), a perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property and:

(1) the security interest is a purchase-money security interest;

(2) the interest of the encumbrancer or owner arises before the goods become fixtures; and

(3) the security interest is perfected by a fixture filing before the goods become fixtures or within 20 days thereafter.

While it is true perfection in a secured purchase-money interest in goods that become fixtures requires a fixture filing, it is also true there may be a lien on the fixtures, but without priority.

The court notes Creditor has not responded. This Motion being noticed pursuant to Local Bankruptcy Rule 9014-1(f)(1), the court declines to argue on behalf of Creditor.

APPLICABLE LAW

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.

DISCUSSION

The Claim is purported to be secured in the full amount. A proof of Claim is prima facie evidence of the Claim. Once objected with sufficient evidence, the burden shifts to Creditor. Creditor has not responded or made the case its claim is valid and enforceable where Objector has provided evidence the Claim is not valid or enforceable. As such, POC 7-1 is disallowed in its entirety.

Based on the evidence before the court, Creditor's claim is disallowed as a secured claim, and is determined to be a general unsecured claim in its entirety. The Objection to the Proof of Claim is sustained.

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 Wells Fargo Bank, N.A. ("Creditor"), filed in this case by Frank William Tovar, Chapter 13 Debtor, ("Objector") having been

presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 7-1 of Creditor is sustained, and Proof of Claim Number 7-1 is disallowed as a secured claim, and is determined to be a general unsecured claim in its entirety.

24. 24-21634-E-13 AP-1 | **JOHN/RORILYN VENTURA** **Mikalah Liviakis** | **MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY** **10-8-24 [22]**

Final Ruling: No appearance at the November 19, 2024 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on October 8, 2024. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

The Motion to Confirm Absence of the Automatic Stay is granted.

Creditor, Wells Fargo Bank, N.A. ("Movant"), moves the court for an order confirming that the automatic stay is not in effect in this case pursuant to 11 U.S.C. § 362(j). Movant seeks confirmation from the court that no automatic stay in effect on real property commonly known as 5105 Cumberland Drive, Roseville, California 95747 ("Property") is not in effect pursuant to the debtor, John Ricson Ventura and Rorilyn Capua Ventura's ("Debtor"), Plan.

The grounds stated with particularity in the Motion are:

A. Debtor confirmed a Chapter 13 Plan on June 13, 2024. Order Confirming, Dckt. 17.

B. Movant's claim is provided for payment as a Class 4 Claim. Plan, Dckt. 3.

C. The terms for treatment of the Class 4 Claim of Movant include the following (emphasis added):

> "Class 4 claims mature after the completion of this plan, are not in default, and are not modified by this plan. These claims shall be paid by Debtor or a third person whether or not the plan is confirmed. . . **Upon confirmation of the plan. . . all bankruptcy stays are modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract.**"

Based on the above, Movant requests relief from the court as follows: "1. Confirming that all bankruptcy stays are modified to allow Wells Fargo Bank, N.A., and its agents and successors, as the holder of a Class 4 secured claim, to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract. . . ." Motion 3:10-12, Docket 22.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Nonopposition on November 5, 2024. Docket 31.

DISCUSSION

The modification of the automatic stay in Class 4 of the confirmed Plan is for the limited purpose, "to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract." The automatic stay exists, but it is modified. (The court does not endeavor to determine if there are other provisions of the Plan that might affect the automatic stay, leaving such to Movant in later motion(s) if necessary.)

The court recognizes that creditors may need an order specifying the continuing effect and modification of an automatic say when state recording and filing law come into play, as well as for title insurance purposes.

The Ninth Circuit Court of Appeals has recognized the basic "discretion is the better part of valor" principle when it comes to the automatic stay. Seeking a separate order clearly specifying the scope of the relief granted in the Plan is not inappropriate.

The court grants the Motion, granting relief that under the terms of the confirmed Chapter 13 Plan, Dckt. 3, in this bankruptcy 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 to Confirm Absence of the Automatic Stay filed by Wells Fargo Bank, N.A. ("Movant"), the holder of a Class 4 Secured Claim under Debtors John and Rorilyn Ventura's confirmed Chapter 13 Plan, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and the court confirms that for the real property commonly known as 5105 Cumberland Drive, Roseville, California "all bankruptcy stays are modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract." Confirmed Chapter 13 Plan, Dckt. 3; Order Confirming, Dckt. 17.

25. 24-24440-E-13 PSB-1 | **TIMOTHY/EVENGELINA HERNANDEZ** **Paul Bains** | **MOTION TO VALUE COLLATERAL OF ONEMAIN FINANCIAL GROUP, LLC** **10-22-24 [12]**

Final Ruling: No appearance at the November 19, 2024 Hearing is required.

The Motion to Value is dismissed without prejudice.

Timothy John Hernandez and Evengelina Hernandez ("Debtor") having filed an *Ex Parte* Motion to Dismiss the pending Motion on November 11, 2024, Dckt. 28; no prejudice to the responding party appearing by the dismissal of the Motion; Debtor having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by David cusick ("the Chapter 13 Trustee"); the *Ex Parte* Motion is granted, the Debtor's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Value filed by Timothy John Hernandez and Evengelina Hernandez ("Debtor") having been presented to the court, Debtor having requested

that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 28, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Value is dismissed without prejudice.

26. 24-21367-E-13 ST-1 | **SVETLANA TKACHUK** **Pro Se** | **MOTION TO CONFIRM PLAN** **9-3-24 [24]**

Final Ruling: No appearance at the November 19, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on September 3, 2024. By the court's calculation, 78 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Svetlana Tkachuk ("Debtor") has provided evidence in support of confirmation. *See* Decl., Docket26. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on November 4, 2024. Docket 39. 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, Svetlana Tkachuk ("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 3, 2024, is confirmed. Debtor 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.