

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein

Bankruptcy Judge
Sacramento, California

December 4, 2018 at 2:00 p.m.

Notice

The court has reorganized the cases, placing all of the Final Rulings in the second part of these Posted Rulings, with the Final Rulings beginning with Item 13.

| | | | |
|----|--------------------------------|-------------------------|-------------------------------|
| 1. | 12-36523 -C-13 | ROY/KATHLEEN GOODENOUGH | MOTION TO AVOID LIEN OF GIZZI |
| | MET -1 | Mary Ellen Terranella | AND REEP, LLP |
| | | | 11-5-18 [65] |

No 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 Debtors, Debtors' Attorney, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on November 5, 2018. **The address used to serve the Creditor, Gizzi and Reep, LLP, does not appear to be the correct address for the law firm. While the address reflected in the Proof of Service is the same as the address reflected in the Abstract of Judgment that was filed in 2012, it is not the address on the current website for the law firm. Additionally, the address on the firm's current website is consistent with the address listed on the California State Bar website for Scott D. Reep, the named individual for the Creditor on the Proof of Service.** 28 days' notice is required. That requirement was met.

The Motion to Avoid 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 Lien of Gizzi and Reep, LLP is granted.~~

This Motion requests an order avoiding the judicial lien of Gizzi and Reep, LLP

("Creditor") against property of Roy Goodenough and Kathleen Goodenough ("Debtors") commonly known as 131 Christine Drive, Vacaville, California ("Property").

A judgment was entered against Debtors in favor of Creditor in the amount of \$31,990.75. Debtors' motion states that an abstract of judgment was recorded with the Solano County Record's Office on August 6, 2012 as Document Number 201200078793, that encumbers the Property. Dckt. 69, Exhibit A.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$176,29.00 as of the petition date. Dckt. 1. The unavoidable consensual liens total \$275,756.70 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor claims an exemption pursuant to California Code of Civil Procedure § 703.140(b)(5) in the amount of \$1.00 on Schedule C. Dckt. 1.

~~After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided in its entirety subject to 11 U.S.C. § 349(b)(1)(B).~~

~~ISSUANCE OF A COURT-DRAFTED ORDER~~

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

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

~~_____ The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Roy Goodenough and Kathleen Goodenough ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~_____ IT IS ORDERED that the judgment lien of Gizzi and Reep, LLP in California Superior Court for Solano County Case No. FCS038574, recorded on August 6, 2012, Document Number 201200078793, with the Solano County Recorder, against the real property commonly known as 131 Christine Drive, Vacaville, California is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.~~

Thru 3

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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on the Debtor Trustee, and other such other parties in interest as stated on the Certificate of Service on October 18, 2018.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$79.00 due on October 11, 2018).

The court's decision is to sustain the Order to Show Cause.

The court's docket reflects that the default in payment which is the subjection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$79.00.

On November 18, 2018, the hearing was continued to permit additional time for the Debtor to cure the delinquency. Debtor's attorney stated at the hearing that he was unable to contact the Debtor because he believed she was in the hospital.

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

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

The Order to Show Cause 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 Order to Show Cause is sustained, no other sanctions are issued pursuant thereto, and the case is dismissed.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on October 30, 2018. Fourteen days' notice is required. That requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The court's decision is to sustain the Objection.

The Trustee opposes confirmation of the Plan based on the following:

A. Debtor is delinquent in plan payment in the amount of \$977.87. Another payment of \$977.87 will become due prior to the hearing. Debtor has paid \$0.00 into the plan.

B. Debtor may not have filed all required tax returns. The IRS filed Claim No. 1-1 indicating that Debtor has not filed a tax return for tax year 2015.

At the hearing -----.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) because the Debtor has not made all required Plan payments and has not filed all required tax returns. The objection is sustained and the Plan is not confirmed.

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtors' Attorney on November 7, 2018. Fourteen days' notice is required. That requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The court's decision is to sustain the Objection.

The Trustee opposes confirmation of the Plan based on the following:

A. Debtors have not provided all required documents to the Trustee including: Questionnaire, 2016 tax return, 6 months of profit and loss statements, identifying tax expenses, 6 months of bank statements, proof of license and insurance or a written statement that no such document exists.

B. Debtors may not be able to make the required plan payments based on statements made by the Debtor at the Meeting of Creditors. Specifically, as the Meeting of Creditors held on December 13, 2018, the Debtor 1 admitted he was uncertain if he will be able to make the payments required in the proposed Plan. Dckt. 15.

At the hearing -----.

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

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtors' Attorney on November 7, 2018. Fourteen days' notice is required. That requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The court's decision is to sustain the Objection.

The Trustee opposes confirmation of the Plan based on the following:

A. Debtors' Plan is not their best effort. Debtors are above the median income but propose a 36 month plan with a \$380.00 monthly payment and 0% dividend to their general unsecured creditors.

B. Debtors' Plan relies on a Motion to Value Collateral that has not yet been filed. The Plan also suggests a "PMSI bifurcation (in re Penrod)."

C. Debtors have not filed or served a Motion to Confirm Plan.

D. Debtors' Statement of Financial Affairs appears incomplete. Debtors do not identify income in question No. 1 from 2017 to the present. (Dckt. 9, page 36). However, Debtors' Schedule I indicates both debtors were employed during that time frame.

At the hearing -----.

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

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on November 7, 2018. Fourteen days' notice is required. That requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The court's decision is to sustain the Objection.

The Trustee opposes confirmation of the Plan based on the following:

A. Debtor's Plan may fail the Chapter 7 liquidation analysis. Debtor may have an interest in real property commonly known as 6721 Carnation, Sacramento, California that was not disclosed on Debtor's Schedule A. Additionally, Debtor did not disclose rental income from that property on his Schedules. The Trustee claims that Debtor's 2016 and 2017 tax returns report approximately \$3,000.00 of annual rental income generated from this property. The Trustee also notes that the Debtor stated at the 341 Meeting of Creditors that interest in the property was transferred to J&J, LLC in 2016 and the rental income reported on his tax returns was an error made by his tax preparer; however, the Trustee does not have sufficient information to determine the veracity of Debtor's claims.

B. Debtor's Plan may not be his best effort under 11 U.S.C. § 1325(b). Debtor proposes to pay \$2,600.00 for 6 months and \$74,000.00 from the future sale of Debtor's real property located at 8608 Cassieri Circle, Sacramento, California within 120 days of filing the petition. Dckt. 3. Debtor's Plan

proposes to pay a dividend of 0% to the general unsecured creditors, however, the Trustee asserts that Debtor is able to full pay the scheduled unsecured claims. The unsecured claims that total \$3,954.43.

C. Debtor's Plan relies on the sale of real property; however, Debtor has not filed a motion to employ a broker or real estate agent and has not filed a motion to sell.

D. Debtor has not provided the Trustee with the required Business Documents including: 6 months of profit and loss statements; 6 months of bank statements; and proof of license and insurance or written statement that no such documentation exists.

E. Debtor has not provided his middle name on the Voluntary Petition.

F. Debtor admitted at the 341 Meeting of Creditors that he received a medial bill from Kaiser estimated to be \$13,000.00 that was not identified in Debtor's schedules.

At the hearing -----.

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

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on November 20, 2018. 14 days' notice is required. That requirement was met.

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

The Motion to Value Collateral and Secured Claim of Meadow River Investments, LLC ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$19,500.00.

The Motion filed by Wade Nielsen ("Debtor") to value the secured claim of Meadow River Investments, LLC ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 34' 2008 Keystone Montana RL RV 5th Wheel ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$19,500.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a purchase-money loan incurred in 2007, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$42,612.43. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of \$19,500.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

At the hearing -----.

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

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

The Motion to Value Collateral and Secured Claim filed by Wade Nielsen (“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 Meadow River Investments, LLC (“Creditor”) secured by an asset described as 34' 2008 Keystone Montana RL RV 5th Wheel (“Vehicle”) is determined to be a secured claim in the amount of \$19,500.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$19,500.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

No 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 Debtors , Debtors' Attorney, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on November 1, 2018. **The Proof of Service indicates that the Creditor Logix Federal Credit Union was served at the P.O. Box address indicated on the Creditor's Proof of Claim and addressed to "Attn: Officer, a Managing or General Agent, or Agent For Service of Process." Dckt. 18. The National Credit Union Administration's website (www.ncua.gov) lists a physical address for Logix Federal Credit Union and identifies the CEO and Manager of the Creditor.** 28 days' notice is required. That requirement was met.

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 Logix Federal Credit Union ("Creditor") is **xxxx.**

The Motion filed by Steve Floyd and Nicole Williams ("Debtors") to value the secured claim of Logix Federal Credit Union ("Creditor") is accompanied by Debtors' declaration. Dckt. 29, Debtors Supplemental Declaration. Debtors are the owners of a 2012 Dodge Journey ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$9,042.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

TRUSTEE'S RESPONSE:

The Trustee responded that Creditor filed Proof of Claim No. 3-2 agreeing with the value of the Vehicle asserted by the Debtors. The Trustee notes that the initial declaration submitted by Debtors (Dckt. 16) was not in compliance with 28 U.S.C. § 1746 because the Debtors statements were not appropriately made under penalty of perjury. The court notes that the Debtors filed a supplemental declaration to correct the issues regarding statements made under penalty of perjury raised by the Trustee. (Dckt. 29).

RULING:

~~————— The lien on the Vehicle’s title secures a non-purchase-money loan to secure a debt owed to Creditor with a balance of approximately \$11,209.19. Therefore, Creditor’s claim secured by a lien on the asset’s title is under-collateralized. Creditor’s secured claim is determined to be in the amount of \$9,042; 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 a minute order substantially in the following form holding that:~~

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

~~————— The Motion to Value Collateral and Secured Claim filed by Steve Floyd and Nicole Williams (“Debtors”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~————— **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Logix Federal Credit Union (“Creditor”) secured by an asset described as 2012 Dodge Journey (“Vehicle”) is determined to be a secured claim in the amount of \$9,042.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$9,042.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.~~

Thru #10

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on August 28, 2018. Fourteen days' notice is required. That requirement was met.

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

| |
|--|
| The Motion to Extend the Automatic Stay is XXXX. |
|--|

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond thirty days in this case. This is Debtor's second bankruptcy case within the last twelve months. Debtor's first bankruptcy case (No. 15-25641, "First Case") was filed on July 15, 2015 and dismissed without discharge on February 28, 2018. Therefore, pursuant to 11 U.S.C. § 362(c)(2)(A), the provisions of the automatic stay end as to Debtor thirty days after filing.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if Debtor failed to file documents as required by the court without substantial excuse. 11 U.S.C. § 362(c)(3)(C)(i)(II)(aa). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(c).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008). Courts consider many factors - including those used to determine good faith under §§ 1307(and 1325(a) - but the two basic issues to determine good faith under 11 U.S.C. § 362(c)(3) are:

1. Why was the previous plan filed?
2. What has changed so that the present plan is likely to succeed?

Elliot-Cook, 357 B.R. at 814-815.

Debtor's Basis for Extension of the Stay:

Here, the Debtor claims that he was unable to make the required payments in their previous bankruptcy due to an inability to refinance a mortgage. However, Debtor's statement is not wholly accurate.

The court notes that in Debtor's previous bankruptcy, the Debtor's initial Plan, filed on July 29, 2015 and confirmed on November 9, 2015, included a provision that Debtor would pay the mortgage claim within (18) months by either refinancing the mortgage or selling the property. First Case Dckts. 13; 28. On February 3, 2017, the Trustee sought to dismiss the case because after (18) months the Debtor had not refinanced the mortgage or sold the house. First Case Dckt. 41. The Trustee noted in his motion to dismiss that, absent the sale or refinanced, Debtor's Plan required 131 months to finish because the Plan only provided for monthly payments of \$700.00.

On February 28, 2017, the court converted the case to a Chapter 7 instead of being dismissed. First Case Dckt. 49.

Shortly thereafter, on May 21, 2017, Debtor sought to reconvert the case back to a Chapter 13 with the stated purpose of paying off the mortgage in order to keep his home. First Case Dckt. 64. As part of his motion to reconvert, Debtor's brother and niece submitted declarations stating that they were able to contribute a combined \$1,300.00 a month to Debtor's monthly payments. First Case Dckts. 67; 68. The court granted Debtor's Motion to Reconvert. First Case Dckt. 77. Upon reconversion, Debtor submitted a proposed Plan to payoff the mortgage over (60) months at 0% interest, with monthly payments of \$1,522.00. First Case Dckt. 83. The court was unpersuaded that Debtor could propose a (60) month plan after reconversion and that Debtor should be allowed to pay 0% interest. First Case Dckt. 110. As such, on September 19, 2017, the court sustained the Trustee's and the Creditor's Objections to Debtor's Plan. Shortly thereafter, Debtor obtain present counsel and voluntarily dismissed his case in February 2018. First Case Dckts. 120; 123; 125.

In support of the success of the present bankruptcy, the Debtor claims that he and his brother are in a better position to refinance the mortgage and/or assist with plan payments. Debtor also claims that his niece may also be able to assist with plan payments. Debtor's motion does not contain declarations from either his brother or daughter attesting to their ability and/or willingness to assist Debtor. Moreover, Debtor's declaration does not provide the specific dollar amounts that Debtor's family members purportedly anticipate contributing to the Plan. Debtor's Plan proposes monthly payments of \$1,550.00 and proposes to pay the Creditor 4% over the life of the Plan. Dckt. 20. While not objections to the Plan are currently filed, the court notes that the deadline to object is October 4, 2018. Dckt. 28.

Trustee's Opposition:

The Chapter 13 Trustee filed an opposition to the Debtor's Motion for Stay Relief, Trustee states that the previous case was dismissed on motion of the Trustee due to Debtor's failure to refinance or sell his residence within 18 months of Plan confirmation. The Trustee also noted that Debtor's filing was incomplete at the time of the filing of the Opposition and the Trustee was not able to determine whether the Plan was confirmable. The court notes that the Debtor filed a Plan on August 31, 2018 but has not yet filed a motion to confirm. (Dckt. 20).

Creditor David Mecurio's Opposition:

Creditor, David Mecurio, objects the Debtor's request to extend the automatic stay. Creditor claims that Debtor's current bankruptcy was not filed in good faith and suggests it is merely an attempt to thwart the Creditor's foreclosure sale of Debtor's residence. Creditor claims that because Debtor's motion does not address how he proposes to make the necessary payments to his creditors, including various taxing authorities, the stay should not be extended.

RULING

Debtor's current Schedule I lists \$1,218 of income from Social Security, plus an additional \$1,200 from "Friends and Family." Dckt. 19. On Schedule J, Debtor lists having monthly expenses of only \$868.00 (which does not include any mortgage payments). *Id.* This includes \$100 for property taxes, but nothing for: insurance or repairs and maintenance for the residence.

Creditor Mecurio has filed Proof of Claim No. 1 for a secured claim in the amount of \$80,051.61. The treatment for this claim is to pay it with 4% interest, amortized over 60 months. Using the Microsoft Excel Loan Calculator, the monthly payment this creditor's claim would be \$1,474.27. If the interest rate was increased to 5.5%, the monthly payment amount increases to \$1,529.98.

The court considers the proposed Chapter 13 Plan, Dckt. 20, in considering whether this case and Plan are being proposed in good faith. The Plan provides for following the following claims:

| | |
|---|--|
| Class 2 Secured Claim, Mecurio, \$80,051.61..... | (\$1,474.27) [at proposed interest rate] |
| Class 2 Secured Claim, IRS, \$1,500.00..... | (\$ 30.00) [at proposed interest rate] |
| Debtor Attorney's Fees, \$3,000..... | (\$ 50.00) |
| Chapter 13 Trustee Fees..... | (\$ 100.00) |
| General Unsecured Claim Dividend, \$7,641.21..... | (\$ -0-) [0.00% Dividend] |

The above Plan requires a monthly plan payment of \$1,654.27 (if the court accepts the proposed 4% interest rate). Because there are no general unsecured claims to be paid, counsel for Debtor will have to amortize his fees at \$50 a month over the Plan, otherwise Debtor could not make the required proposed Class 2 payments.

Debtor would have to find an additional \$105.00 a month to fund the above proposed plan. In Debtor's declaration he states that his brother, who has to assist funding the plan, makes only \$3,500 a

month. No declarations are provided of the people who will “contribute” the monthly plan payment amount.

At the hearing, Creditor reported that Debtor had failed to pay property taxes, which now are in excess of \$20,000, and the County has a tax sale (which is stayed by the automatic stay) for February 2019. Opposition, p.3:11-18, Dckt. 22.

At the hearing Debtor’s counsel acknowledged these increasing financial challenges and the need for the Debtor to address some of the growing financial realities. Debtor reported that he is working on an amended plan addressing these realities and working to protect Debtor’s equity in the property. Debtor and Creditor agreed to an interim extension of the stay to allow Debtor to focus on the new plan and not be distracted by the effect of 11 U.S.C. § 362(c)(3)(A) with respect to the automatic stay “terminating as to the Debtor.”

The motion was granted on an interim basis and the automatic stay is extended for all purposes through and including December 11, 2018, unless terminated or extended by further order of this court and the court continued the hearing to November 20, 2018. Dckt. 35.

The court notes that Creditor Mecurio has filed a Motion for Relief from Stay set for hearing on December 4, 2018 and has a pending Objection to Debtor’s Motion to Confirm Plan filed on October 23, 2018. Dckts. 61; 66.

On November 16, 2018, Debtor and the responding Creditor filed a Stipulation requesting that the court continue the hearing to December 4, 2018 to allow for the resolution of the pending Motion to Confirm the Chapter 13 Plan prior to the ruling on the present Motion. Dckt. 78. The court continued the hearing to allow for such resolution.

At the hearing ----.

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

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

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

IT IS ORDERED that the Motion is granted and the automatic stay is **xxxx**.

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

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

Below is the court's tentative ruling.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 23, 2018. Thirty-five days' notice is required. That requirement was met.

The court's decision is to ~~xxxx~~ the Motion to Confirm the Plan.

TRUSTEE'S RESPONSE:

The Chapter 13 Trustee does not object to the confirmation of the Debtors' Plan. The Debtor is current on Plan payments. Dckt. 59.

SECURED CREDITOR DAVID MERCURIO'S RESPONSE:

Secured Creditor, David Mercurio, opposes the Motion to Confirm based on the following:

A. Debtor has been using multiple bankruptcy proceedings to frustrate the Creditor's foreclosure proceedings since July of 2015. In Debtor's prior case (Case No. 15-25641) Debtor's Plan relied on a sale or refinance of Debtor's residence. The case was dismissed because Debtor did not obtain a refinance agreement or sell the property. Debtor's current case again relies on the sale of the residence.

B. Debtor's Plan payments rely on a monthly contribution from Debtor's brother, Joseph Davis, of \$1,200.00. Creditor contends that the declaration signed by James Davis (Dckt. 52) attesting to this contribution under penalty of perjury is insufficient. Creditor claims that the declaration does not provide sufficient information to permit the Creditor to determine the feasibility of the family contributions.

C. Debtor is delinquent on his real property taxes. Creditor asserts Debtor has not paid real property taxes since 2011 and Creditor estimates that total amount due is \$20,165.30. Creditor claims that Debtor has not included in the Plan a provision to pay these delinquent property taxes, putting Creditor's loan at risk as the property securing Creditor's loan is scheduled for a tax-defaulted sale on February 25,

2019.

DEBTOR'S REPLY:

Debtor's counsel replies that in the present case, the court approved the employment of a real estate agent to sell the home. Dckt. 76. The home is insured by Averwood Insurance Services, Inc. through October 11, 2019. Debtor is current with the proposed plan payments which provides for a payment to the Creditor of \$1,270.00 a month until the closing of the sale. Debtor claims that the value of the home is \$215,000.00 and believes that a sale would generate sufficient proceeds fully pay the Creditor's claim in the approximate amount of \$85,000.00.

Debtor's Reply does not address the Creditor's concern regarding the non-payment of real property taxes.

At the hearing -----.

The Plan **xxxx** with 11 U.S.C. §§ 1322 and 1325(a) and is **xxxx** .

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

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

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

IT IS ORDERED that Motion to Confirm the Plan is **xxxx** and the proposed Chapter 13 Plan is **xxxx** .

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

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

Below is the court's tentative ruling.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 12, 2018. Thirty-five days' notice is required. That requirement was met.

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

The Chapter 13 Trustee objects to the confirmation of the Debtors' Plan based on the following:

A. Debtor's Schedule I appears inaccurate. Debtor admitted at the Meeting of Creditors that she no longer receives CalFresh assistance; however, the CalFresh assistance is still listed on Debtor's Schedule I. Additionally, Debtor appears to have increased her gross monthly wage income by \$318.00 but does not provide an explanation for the increase.

B. Debtor is delinquent in plan payments in the amount of \$133.00. Debtor has another plan payment of \$133.00 that will become due prior to the hearing. Debtor has paid \$399.00 into the plan.

C. Debtor's Plan states that attorney fees of \$3,095.00 shall be paid through the plan. The Trustee is unable to disburse any fees because Section 3.06 of the plan lists the administrative expense as \$0.00.

At the hearing -----.

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

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

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

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

IT IS ORDERED that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

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

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

Below is the court's tentative ruling.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 23, 2018. Thirty-five days' notice is required. That requirement was met.

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

The Chapter 13 Trustee objects to the confirmation of the Debtors' Second Modified Plan based on the following:

A. Debtors cannot make the payments required under 11 U.S.C. § 1325(a)(6). Debtors are delinquent \$3,945.00 under the terms of the proposed modified plan, approximately one month's payment under the modified plan. Debtors have paid \$98,480.00 into the plan.

B. Debtors' Supplemental Schedules I and J (Dckt. 129) reflect an overall increase in monthly income and indicate that Debtors have increased voluntary retirement plan contributions from \$145.84 to \$422.50. Despite this, Debtors are proposing 0% to unsecured creditors. The Trustee also notes that it appears that the Debtor 2 has obtained a loan from her 401(k) without court permission.

At the hearing -----.

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

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

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

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

IT IS ORDERED that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

FINAL RULINGS

13. [15-26095](#)-C-13 STEVEN/DEBORAH BROWN MOTION FOR COMPENSATION FOR
[MRL](#)-2 Mikalah Liviakis MIKALAH RAYMOND LIVIAKIS,
DEBTORS' ATTORNEY
10-24-18 [\[39\]](#)

Final Ruling: No appearance at the December 4, 2018 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, creditors, parties requesting special notice, and Office of the United States Trustee on October 24, 2018. 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). That requirement was met

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 Compensation is granted.

Mikalah Liviakis, the Attorney("Applicant") for Steven Brown and Deborah Brown, Debtors ("Client"), makes a First Application for Compensation in this case.

Fees are requested for the period March 15, 2018, through October 24, 2018. The order substituting the Applicant as Debtors' attorney was entered on March 29, 2018. Dckt. 27. Applicant requests fees in the amount of \$2,662.50 and costs in the amount of \$0.00.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

- (A) the time spent on such services;
- (B) the rates charged for such services;
- (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
- (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
- (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
- (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

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

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

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 Debtors include Summary of Services. The court finds the services were beneficial to Client were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

Applicant provides a task billing analysis and supporting evidence for the services provided,

which are described in the following main categories.

General Case Administration: Applicant spent 2.6 hours in this category. Applicant reviewed the case and communications with the Debtor upon being substituted in as counsel.

Fee Application: Applicant spent 1.4 hours in this category. Applicant drafted the application for compensation.

Chapter 13 Plan: Applicant spent 3.1 hours in this category. Applicant drafted a new plan, motion to confirm, new schedules I & J, and meeting with Debtor.

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 |
|--|-------------|--------------------|--|
| Mikalah Liviakis | 7.1 | \$375.00 | \$2,662.50 |
| Total Fees for Period of Application | | | \$2,662.50 |

Costs & Expenses

Applicant seeks the allowance and recovery of costs and expenses in the amount of \$0.00. pursuant to this application

FEES ALLOWED

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. Fees in the amount of \$2,662.50 are approved pursuant to 11 U.S.C. § 331, and subject to final review 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 under the confirmed Plan.

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

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

The Motion for Allowance of Fees and Expenses filed by Mikalah Liviakis (“Applicant”), Attorney for Steven Brown and Deborah Brown, Debtors, (“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 Mikalah Liviakis attorney employed by the Debtors for is allowed: (1) fees in the amount of \$2,662.50; and (2) expenses in the amount of \$0.00,

Final Ruling: No appearance at the December 4, 2018 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on November 7, 2018. Fourteen days' notice is required. That requirement was met.

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

| |
|--|
| The Objection to Confirmation of Plan is continued to January 15, 2019 at 2:00 p.m. |
|--|

The Trustee opposed confirmation on the basis that :

A. Debtors did not appear at the Meeting of Creditors held on November 1, 2018.

B. Debtors had not filed or served a Motion to Confirm Plan as of the date of the Trustee's Objection.

C. Debtors have not listed all expenses on their Schedule J and may not have identified all sources of income on their Schedule I.

DEBTORS' RESPONSE:

Debtors' attorney responds that the Debtors were unable to attend the November 1, 2018 Meeting of Creditors due to an illness. The Meeting of Creditors has been rescheduled for December 6, 2018. Dckts. 31 & 32. Debtors' attorney states that he filed and served a Motion to Confirm Plan and a hearing on the Motion is set for January 15, 2019. Dckt. 32. Debtors' attorney states that Debtors' filed an Amended Schedule J to correct a scrivener's error. Dckt. 32. Debtors' attorney also states that Debtors are appealing the amount of Social Security Income they receive and anticipate the monthly payments to increase from \$1,398.00 to \$1,7500 in Month 4 of the Proposed Plan.

Debtors request that the Objection to Confirmation be continued to January 15, 2019 in order to be heard on the same day as the Motion to Confirm the Plan.

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

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

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

IT IS ORDERED that the Objection to Confirmation of Plan is continued to January 15, 2019 at 2:00 p.m.

15. [18-25214](#)-C-13 ALLISON DAVISON
[DPC](#)-1 Michael Hays

OBJECTION TO DISCHARGE BY DAVID
P. CUSICK
10-10-18 [[19](#)]

DEBTOR DISMISSED: 11/15/2018

No appearance at the December 4, 2018 hearing necessary. Objection to Discharge is deemed moot due to the case being dismissed on November 15, 2018. Dckt. 34.

16. [18-25822](#)-C-13 STEPHANIE MAY
[DPC](#)-1 Marc Voisenat

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
10-30-18 [[18](#)]

DEBTOR DISMISSED: 11/15/2018

No appearance at the December 4, 2018 hearing necessary. Objection to Discharge is deemed moot due to the case being dismissed on November 15, 2018. Dckt. 28.

Thru #14

Final Ruling: No appearance at the December 4, 2018 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on October 30, 2018. Fourteen days' notice is required. That requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

| |
|---|
| The Objection to Confirmation of Plan is denied as moot. |
|---|

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Objection, Fernani Narvasa ("Debtor") filed a First Amended Plan and corresponding Motion to Confirm on November 12, 2018. Dckts. 29, 32. Filing a new plan is a de facto withdrawal of the pending plan. The Objection to Confirmation of Plan is denied as moot, and the plan is not confirmed.

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

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

The Objection to Confirm the Amended Chapter 13 Plan filed by Fernani Narvasa ("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 Objection is denied as moot, and the proposed Chapter 13 Plan is not confirmed.

Final Ruling: No appearance at the December 4, 2018 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on October 30, 2018. Fourteen days' notice is required. That requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

| |
|---|
| The Objection to Confirmation Of Plan is denied as moot. |
|---|

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Objection, Fernani Narvasa ("Debtor") filed a First Amended Plan and corresponding Motion to Confirm on November 12, 2018. Dckts. 29, 32. Filing a new plan is a de facto withdrawal of the pending plan. The Objection to Confirmation of Plan is denied as moot, and the plan is not confirmed.

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

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

The Objection to Confirm the Amended Chapter 13 Plan filed by Fernani Narvasa ("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 Objection is denied as moot, and the proposed Chapter 13 Plan is not confirmed.

19. [18-26042](#)-C-13 ARLENE DILLARD
Richard Jare

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
11-5-18 [[17](#)]

DEBTOR DISMISSED: 11/15/2018

No appearance at the December 4, 2018 hearing necessary. Objection to Discharge is deemed moot due to the case being dismissed on November 15, 2018. Dckt. 22.
