

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

December 8, 2020 at 2:00 p.m.

1. <u>19-27823-E-13</u> <u>MET-3</u>	GURBAX/USHA SUNAK Mary Ellen Terranella	MOTION TO CONFIRM PLAN 10-24-20 <u>[67]</u>
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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, parties requesting special notice, and Office of the United States Trustee on October 24, 2020. By the court's calculation, 45 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 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 Plan is DENIED.
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The debtors, Gurbax Singh Sunak and Usha Rani Sunak ("Debtor") seek confirmation of the Chapter 13 Plan. The Plan provides for monthly payments of \$4,675 for 12 months, followed by \$4,940.00 for 48 months, and a zero (0) percent dividend to unsecured claims totaling \$211,723.00. Plan, Dckt. 70. 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 November 24, 2020. Dckt. 81. Trustee opposes confirmation of the Plan on the basis that:

- A. There is not sufficient evidence and information to properly assess the non-standard provisions dealing with the treatment of "secured creditor Leonel Cortez, et al."

DISCUSSION

Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Trustee notes that the plan calls for "secured creditor Leonel Cortez, et al." to be paid directly by Debtor a lump sum of \$60,000 followed by \$2,500 monthly payments for the last 48 months of the plan. Trustee. At this juncture Trustee is concerned by the source of the \$60,000 and if it is non-exempt then those funds should be paid to creditors holding unsecured claims.

Moreover, Trustee is unsure as to the accuracy of Debtor's Schedules where the December 2019 Schedules showed a \$8,075 income but is now projected at \$10,575.00. Trustee requests that Debtor file a detailed business income and expense statement so as to accurately assess whether Debtor can afford to make the proposed plan payments.

Trustee asks the court to continue the motion to allow for supplemental evidence and pleadings.

Pending Motion to Approve Settlement

On November 27, 2020, Debtor filed a Motion to Approve Settlement with Cortez et al. Dckt. 84. Under the Settlement, Cortez et al. reduce the amount of their claim to \$180,000.00 from \$321,827.00. The Motion states that Debtor has paid \$60,000.00 to Cortez et al. prior to November 20, 2020. The source of these funds are stated in the Motion to be from Debtor's daughters. Motion, Dckt. 84 at 2. ^{Fn.1.}

FN. 1. It is not clear whether one of the two daughters includes the adult daughter who is a dependent of the Debtor. Schedule J and Supplemental Schedule J; Dckts. 1, 72.

The Motion states that Cortez et al. recorded a judgment lien against the Pebble Beach Drive Property. The court has already issued a final order avoiding Cortez et al.'s judicial lien on the Pebble Beach Drive Property. Order, Dckt. 76.

The Motion further states that a judgment lien was also recorded against the Debtor's Harbor Drive Property. No order avoiding that judgment lien has been issued. In the Declaration filed in support of the Motion to Approve Settlement, Debtor testifies that the value of the Harbor Drive Property may be more (in an unstated amount) than the senior encumbrances, or the value may be less than the senior encumbrances. No copy of the appraisers valuations are provided.

The court does have Debtor's statement under penalty of perjury on Schedule A/B that the Harbor Drive Property has a value of \$375,000. Dckt. 1 at 13. On Schedule D, Debtor states that Northeast Bank has a claim of \$347,930.00 (this is consistent with Proof of Claim No. 15-1 filed by Northeast Bank), and \$19,994.00 in property taxes secured by the Property. Thus, based on Debtor's information, it appears that Cortez et al.'s secured claim has a value of \$0.00.

It appears that Debtor, Cortez et al., and their respective counsel have chosen to "approve" and implement their settlement without the need for any court approval. They have chosen to move substantial monies around, purportedly from Debtor's daughters, outside the transparency of the federal judicial process. Also, they have chosen to act without any federal court authorization.

It further appears that Debtor and Cortez et al., and their respective attorneys, are seeking retroactive approval/cramming down on the court their pre-approved, already implemented settlement, which works to divert monies to Cortez et al. on their unsecured claim and discriminate improperly against other creditors with unsecured claims. While Debtor may wish to prefer Cortez et al. and favor Cortez et al. over the other creditors with unsecured claims – a good faith, *bona fide*, based on the Bankruptcy Code basis for such discrimination is not identified for the court.

Additionally, no testimony is provided by Debtor's daughters as to the source of the \$60,000 gift to Debtor.

Looking at Supplemental Schedule J, Debtor appears to have at least \$7,400 a month to fund a plan. Dckt. 72. Over sixty months, that totals \$444,000. After deducting 10% for Chapter 13 Trustee Fees and \$5,000 for Debtor's counsel's fees, that leaves \$395,000 for payment of creditor claims.

Using the proposed Plan, the waterfall of payments for claims provided in the Plan would be as follows:

Plan Payments Total For Disbursement on Claims	\$395,000
Class 1 Secured Claim - Pebble Beach Drive Property Collateral	(\$216,440)
Class 2 City Property Tax Claim Pebble Beach Property Collateral	(\$3,600)
Class 2 County Property Tax Claim Harbor Drive Property Collateral	(\$57,780)
Class 5 IRS Priority Unsecured Claim Proof of Claim No.	(\$11,081)
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Plan Funds For General Unsecured Claim Disbursement	\$106,099

Thus, it appears that there would be \$106,099 available to disbursement to creditors holding general unsecured claims.

In addition to the Cortez et al. claim (for which there appears to be a \$0.00 § 506(a) secured claim) in the unsecured amount of \$321,827 (duplicate Proofs of Claim Nos. 11-1, 12-1), the other general unsecured claims total \$42,213, for a total of \$364,040 in aggregate general unsecured claims. With \$106,099 to distribute on the general unsecured claims, that would be a 29.2% dividend for creditors holding general unsecured claims.

From such a dividend, Cortez et al. would receive a distribution of \$93,651 and the other creditors holding general unsecured claims would receive \$12,284, not an insignificant amount for general unsecured claims in a Chapter 13 case.

Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable. Further, no settlement has been approved by the court (though chosen to be independently implemented by Debtor and Cortez et al.), which settlement appears to discriminate against creditors with general unsecured claims and to favor the general unsecured claim of Cortez et al.

The Plan does not comply with 11 U.S.C. §§ 1322, 1323, 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 debtors, Gurbax Singh Sunak and Usha Rani Sunak ("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 Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

**TELEPHONIC APPEARANCES OF
AUSTIN NAGEL, ESQ. AND KIRSTEN MARTINEZ, ESQ.,
ATTORNEYS FOR SPECIALIZED LOAN SERVICING,
REQUIRED FOR HEARING**

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, creditors, parties requesting special notice, and Office of the United States Trustee on November 17, 2020. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice).

The Motion to Sell Property 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, -----.

<p>The Motion to Sell Property is granted.</p>

The Bankruptcy Code permits Jose Mari Padilla Pagtalunan and Jeannette Rojas Pagtalunan, the Chapter 13 Debtor, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the real property commonly known as 7404 Song Sparrow Way, Elk Grove, California ("Property").

The proposed purchaser of the Property is Nguyen Nguyen, and the terms of the sale are:

A. The sale is all cash for the purchase price of \$450,000.

- B. Buyer to provide a \$4,500 deposit.
- C. Escrow to close 30 days after acceptance.
- D. Buyer to pay county and city transfer taxes/fees.

DISCUSSION

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

Limited Opposition of Creditor

On November 18, 2020, Creditor Specialized Loan Servicing filed a Limited Opposition stating no opposition provided that the order for the sale state that Creditor's claim is to be paid in full, that the sale be completed within 90 days from the date the order is entered, and that Creditor will have relief from the automatic stay if the sale is not completed within 90 days. Dckt. 91.

Other than a throwaway request for relief, without complying with the requirements imposed by the Supreme Court in Federal Rule of Bankruptcy Procedure 4001 to obtain relief from the stay, no basis is provided by Creditor for the court writing relief from stay into an order granting authorization to sell real property.

At the hearing, the court first inquired of Creditor's counsel the proper basis under the Federal Rule of Bankruptcy Procedure for creditor including such request for relief being made in this Contested Matter in the Limited Opposition. Counsel stated to the court that **XXXXXXX**

Counsel was then asked by the court to state with particularity the grounds for relief pursuant to 11 U.S.C. § 362 are stated for the relief from the automatic stay. Counsel stated to the court **XXXXXXX**

An attorney or business experienced in financing and real estate transactions may know that granting relief from the stay may well chill possible sales and create a situation for the creditor with the secured claim to obtain valuable collateral for the amount of the secured debt, which is significantly less than the value of the property. Possible buyers fail to present offers or parties in contract find reasons to break the contract, projecting that they could buy the property for a discount either at the foreclosure sale or from the creditor after foreclosure.

With respect to Creditor including in the Opposition a request for relief from the stay, the court orders **XXXXXXX**

Granting Motion

Trustee filed a Response on November 23, 2020 where Trustee states no opposition to the terms of the sale but noting that Debtor is delinquent \$195,664.28 in plan payments and does not oppose the

motion so long as all of the net proceeds are paid into the plan as stated in the motion to sell which will bring Debtor current under the plan. Dckt. 93.

To address Trustee's concerns, as stated in the order, all proceeds are to be paid directly to the Trustee from escrow after Class creditor is paid.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the sale will pay off Class 1 creditor Specialized Loan Servicing and Debtor intends to pay net proceeds from the sale into the Chapter 13 Plan.

Movant has estimated that a five (5) percent broker's commission from the sale of the Property will equal approximately \$22,500.00, where broker for Debtor will receive a 2.5 percent commission (approximately \$11,250) and broker for Buyer also receiving a 2.5 percent commission (approximately \$11,250). As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than five (5) percent commission.

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 Sell Property filed by Jose Mari Padilla Pagtalunan and Jeannette Rojas Pagtalunan, the Chapter 13 Debtor, ("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 Jose Mari Padilla Pagtalunan and Jeannette Rojas Pagtalunan, the Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Nguyen Nguyen or nominee ("Buyer"), the Property commonly known as 7404 Song Sparrow Way, Elk Grove, California ("Property"), on the following terms:

- A. The Property shall be sold to Buyer for \$450,000 on the terms and conditions set forth in the Purchase Agreement, Exhibit B, Dckt. 88, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.
- C. The Chapter 13 Debtor is authorized to execute any and all documents reasonably necessary to effectuate the sale.
- D. The Chapter 13 Debtor is authorized to pay a real estate broker's commission in an amount not more than five (5) percent of the actual purchase price upon consummation of the sale: with 2.5 percent commission to be paid to the Chapter 13 Debtor's broker,

Norcal Gold, Inc. dba Re/Max Gold Laguna and 2.5 percent commission to be paid to Buyer's broker Realty One Group.

- E. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtor. Within fourteen days of the close of escrow, the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.

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 Chapter 13 Trustee on November 11, 2020. By the court's calculation, 27 days' notice was provided. 28 days' notice is required.

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

The Motion to Dismiss is denied without prejudice.

1 Oak Ventures Step Fund LLC ("Creditor"), has filed this Motion seeking dismissal of the case on the basis that:

1. the debtor, Milton Raul Perez ("Debtor"), has failed to propose an amended plan which constitutes unreasonable and ongoing delay that is prejudicial to Creditor.

FILING OF AMENDED PLAN

Debtor filed an Amended Plan and Motion to Confirm on December 4, 2020. Dckt. 49, 47. The court has reviewed the Motion to Confirm the Amended Plan and the Declaration in support filed by Debtor. Dckt. 50. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor's personal knowledge. FED. R. EVID. 601, 602.

Debtor appearing to be actively prosecuting this case, the Motion to Dismiss is denied without prejudice.

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 Dismiss the Chapter 13 case filed by 1 Oak Ventures Step Fund LLC (“Creditor”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

4. 19-23966-E-13 BLG-2	ALVIN/MICHELLE HAYMON Chad Johnson	CONTINUED MOTION TO MODIFY PLAN 9-22-20 [45]
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**The Court Has Posted This as a Tentative Ruling to
Ensure that It Correctly has Stated the Terms Agreed
to by the Debtor and Trustee**

**No Appearance is Required if the Parties Do Not Have
Any Issues to Address Regarding the Ruling Below**

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’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 22, 2020. By the court’s calculation, 49 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.
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The debtor, Alvin and Michelle Haymon (“Debtor”) seeks confirmation of the Modified Plan because debtors have separated and moved into separate homes and debtor Alvin Haymon has been temporarily laid off due to COVID-19. Declaration, Dckt. 48. The Modified Plan provides payments of \$1,530.00 for 14-60 months, and a zero (0) percent dividend to unsecured claims totaling \$0.00. Modified Plan, Dckt. 50. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on October 26, 2020. Dckt. 55. Trustee opposes confirmation of the Plan on the basis that Debtor has unexplained increased deductions.

DISCUSSION

Unexplained Increase of Deductions

Trustee argues that Plan is not feasible because Debtors’ Schedule I indicates Debtor Alvin’s deductions for tax, medicare, and social security have increased from \$1,248.19 to \$1,563.66 despite his income being reduced, and Debtor Michelle has a monthly voluntary retirement contribution of \$242.67. Debtors did not provide an explanation for the changes for these deductions and have proposed reducing the percentage to unsecured creditors from 64.31% to 0%. Trustee opposes the motion unless Debtors can provide adequate evidence to support the changes proposed in the form of a declaration.

Debtor filed a Reply on November 3, 2020 explaining that Debtor Alvin did not voluntarily adjust his federal withholdings with his employer but that the calculations changed, and that Debtor Michelle’s voluntarily retirement deduction of \$242.67 is exactly the same as when the case was filed. Dckt. 58.

In making these statements, Debtor neglects to address several points. First, while Debtor Alvin’s employer has purportedly unilaterally increased the withholding, without any correction by Debtor, Debtor Alvin does not consider how much of this unilateral withholding change will be coming back as part of a tax return.

For Debtor Michelle, her decision to keep making voluntary retirement contributions does not consider that under the prior plan Debtor was making a 63% dividend on unsecured claims, but under the proposed Modified Plan these drop to a Zero Percent (0.00%) unsecured dividend.

November 19, 2020 Joint Response

On November 19, 2020, Debtors and Trustee filed a Joint Supplemental Response stating that the following have been agreed to by the pertinent parties:

1. Debtor will discuss reducing tax deductions with his employer in order to increase the available net income and increase the plan payment by \$400 starting with the December 25, 2020 plan payment.
2. Debtor will turn in copy of the 2020 tax return and turn over any refund over \$2,000 (state and federal combined).

3. Order language:

“Section 7.01: Section 2.01 - Debtors will pay \$1,530 per month for months 14 - 17, and \$1,930 per month for months 18 - 60.

Section 7.01: Section 2.02 - On or before April 30, 2021; April 30, 2022; and April 30, 2023; Debtors will provide the Trustee with a copy of their filed state and federal tax returns. Any combined (State + Federal) refund in excess \$2,000 will be turned over to the trustee as an additional plan payment.”

Dckt. 64.

The Modified Plan, as amended, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtors, Alvin James Haymon and Michelle Bobbi Haymon (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor’s Modified Chapter 13 Plan filed on September 22, 2020 and as amended with the following,

“Section 7.01: Section 2.01 - Debtors will pay \$1,530 per month for months 14 - 17, and \$1,930 per month for months 18 - 60.

Section 7.01: Section 2.02 - On or before April 30, 2021; April 30, 2022; and April 30, 2023; Debtors will provide the Trustee with a copy of their filed state and federal tax returns. Any combined (State + Federal) refund in excess \$2,000 will be turned over to the trustee as an additional plan payment.”

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

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 and Debtor's Attorney on November 18, 2020. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.
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The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that Debtor failed to provide his social security number at the Meeting of Creditors.

DISCUSSION

Every individual debtor shall bring to the meeting of creditors under 11 U.S.C. § 341 evidence of social security number(s), or a written statement that such documentation does not exist. FED. R. BANK. P. 4002(b)(1)(B). Without the required documents, the Trustee is unable to properly examine the Debtor at the meeting of creditors.

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, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

6. <u>20-24679-E-13</u> <u>DWE-1</u>	PRANEE AREND Mark Wolff	OBJECTION TO CONFIRMATION OF PLAN BY CITIBANK, N.A. 11-19-20 <u>[23]</u>
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, and Office of the United States Trustee on November 19, 2020. By the court’s calculation, 19 days’ notice was provided. 14 days’ notice is required.

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

The Objection to Confirmation of Plan is sustained.
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Citibank, N.A., as trustee for CMLTI Asset Trust (“Creditor”) holding a secured claim opposes confirmation of the Plan on the basis that:

A. Plan fails to provide for the curing of the default of Creditor’s claim.

B. Plan is not feasible.

DISCUSSION

Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts \$13,534.21 in pre-petition arrearage.

Here, the Plan proposes to cure \$11,000 arrearage. Creditor asserts understanding that the Proof of Claim controls but objects on the basis that to the extent the arrearage cannot be paid in a reasonable amount of time due to the amount being understated in the plan and thus Debtor not having sufficient additional income to increase the plan payment in order to account for the correct amount in arrearage.

This turns to Creditor's argument that the plan is not feasible. Creditor argues that Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). According to Creditor, Debtor's monthly net income per Schedule J is \$1,629.60 and the proposed plan payment is \$1,495.00, leaving a cushion of \$134.60. Debtor has to account for the additional \$42.23 a month to account for the full pre-petition arrearage and the monthly payment to Creditor is \$5.59 more than what is listed in the plan.

Creditor also argues that Debtor's history of dismissed Chapter 13 bankruptcies and the fact that Debtor's income is substantially based on interest and dividends and non-debtor, non-borrower spouse's retirement income makes it less likely that Debtor may succeed in this case.

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

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 Citibank, N.A., as trustee for CMLTI Asset Trust ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

~~Sufficient Notice Not Provided.~~ The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 24, 2020. By the court's calculation, 45 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Certificate of Service uses a relatively current mailing matrix generated July 24, 2020. Seventeen parties in interest are stated to have been served. Dckt. 64. However, when the court checked the mailing matrix on December 5, 2020, seventy-six parties in interest are listed on the current mailing matrix. ^{Fn.1.}

FN. 1. https://ecf.caeb.uscourts.gov/cgi-bin/MailLabelsCase.pl?717110894575583-L_1_0-1.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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).

However, service ~~has/has not~~ **XXXXXXX**

The Motion to Confirm the Plan is XXXXX.
--

The debtors, Francisco Segura and Denise E. Segura ("Debtor") seek confirmation of the Chapter 13 Plan. The Plan provides for payment of \$501.00 for the first four months, followed by payments of \$1,800.00 for 56 months starting August 25, 2020, and a three (3) percent dividend to unsecured claims totaling \$237,996.00. Plan, Dckt. 63. 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 November 24, 2020. Dckt. 65. Trustee opposes confirmation of the Plan on the basis that Debtor has failed to clarify whether the Class 1 claim for the mortgage on Debtor's primary residence has been paid.

DISCUSSION

Class 1- Wells Fargo

Debtors must clarify if they have been making mortgage payments since the case was filed on March 12, 2020. If Wells Fargo's claim has not been paid, then Trustee and creditor must be informed as to whether these payments are to be paid first or paid over time. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

A review of the Mailing Matrix (Dckt. 64) does not include Wells Fargo Bank as having been served with the Motion to Confirm or the proposed plan.

At the hearing, ~~XXXXXXXXXXXXXXXXXX~~

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

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

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

~~The Motion to Confirm the Chapter 13 Plan filed by the debtors, Francisco Segura and Denise E. Segura ("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 Plan is denied, 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.

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

Sufficient Notice **Not** Provided. No proof of service was filed with this Motion.

The Motion to Sell Property has **not** been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). No certificate of service has been filed by the Movant. At the hearing, counsel for Movant **XXXXXXX**

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.

<p>The Motion to Sell Property is granted.</p>
--

The Bankruptcy Code permits Luigi Leandro Christensen, the Chapter 13 Debtor ("Movant"), to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant seeks retroactive approval of the sale of the personal property commonly known as 1970 Chevrolet Malibu ("Property") pursuant to 11 U.S.C. § 105(a). Movant provides the Declaration of Luigi Leandro Christensen to provide evidence regarding the sale.

On September 15, 2020, Debtor sold the Property to an unidentified co-worker for \$20,000. Declaration, Dckt. 36, ¶ 2. Debtor disclosed the sale of the Property at the September 17, 2020 Meeting of Creditors. *Id.*, ¶ 7. Debtor testifies that he was unaware that he was required to obtain court approval of the sale. *Id.*, ¶ 9.

According to Debtor's Schedule C, the car is exempted in the amount of \$12,912.90 pursuant to C.C.P. § 703.140(b)(2) and C.C.P. § 704.140(b), respectively. Dckt. 1.

DISCUSSION

Nunc Pro Tunc

As a preliminary matter, Luigi Leandro Christensen, the Chapter 13 Debtor (“Debtor”), is seeking a “retroactive authorization” rather than *nunc pro tunc* authorization. The Ninth Circuit has long held that *nunc pro tunc* approval is not the proper legal basis for seeking retroactive authorization of actions in a bankruptcy case. *Sherman v. Harbin (In re Harbin)*, 486 F.3d 510, 515 n. 4 (9th Cir. 2007). *Nunc pro tunc* amendments are usually used to correct errors in the record and are extremely limited in scope. *Id.* The Ninth Circuit noted that while it is more accurate to call such after-the-fact authorizations “retroactive approvals,” it is customary, but not necessarily correct, to refer to them generically as *nunc pro tunc* in bankruptcy practice. *Id.* The two names stand for the same set of standards and can be used interchangeably. *See, e.g., Atkins v. Wain*, 69 F.3d 970, 974–78 (9th Cir. 1995) (alternating between using *nunc pro tunc* and “retroactive approval” when determining whether a law firm had established exceptional circumstances allowing them to be paid for services to debtor not approved by the court). This long standing Ninth Circuit law was restated by the Supreme Court in *Roman Catholic Archdiocese of San Juan v. Feliciano*, 140 S. Ct. 696, 2020 U.S. LEXIS 1356 (2020).

A bankruptcy court can exercise its equitable discretion to grant retroactive authorizations when it is appropriate to carry out the Bankruptcy Code and when the approval benefits the debtor’s estate. *In re Harbin*, 486 F.3d at 522. Retroactive approvals should only be used in “exceptional circumstances.” *Atkins*, 69 F.3d at 974.

Debtor correctly states the law by seeking such relief pursuant to section 105(a) of the Bankruptcy Code which allows the court to “issue any order, process, or judgement that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. §105(a).

Here, Debtor argues that the failure to seek approval of the sale was based on negligence and not a bad faith attempt to manipulate the code or prejudice the creditors. Motion, at 3:15-17. Debtor argues that there is no evidence of bad faith and that indeed Debtor disclosed the sale two days after the sale at the meeting of creditors. *Id.*, 13-15.

Additionally, Debtor argues that the property having been sold at an amount greater than the valuation provided in the Schedules is to the benefit of the creditors since Debtor plans to increase plan payments to pay the non-exempt proceeds from the sale into the plan. *Id.*, 20-22.

Trustee filed a Response noting that the motion does not request the court grant the motion on the condition that Debtor pay the proceeds into the plan nor does it mention whether Debtor still has the funds. Dckt. 38. Trustee does not oppose the motion provided Debtor has to pay the non-exempt funds to the Trustee immediately. *Id.*, at 2:4-5.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate, with the non-exempt proceeds paid into the Chapter 13 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 Sell Property filed by Luigi Leandro Christensen, the Chapter 13 Debtor, (“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 Luigi Leandro Christensen, the Chapter 13 Debtor, is retroactively authorized to sell pursuant to 11 U.S.C. §§ 105(a) and 363(b) the Property commonly known as 1970 Chevrolet Malibu (“Property”) for \$20,000.

IT IS FURTHER ORDERED that the Chapter 13 Debtor is to pay the non-exempt funds in the amount of \$7,087.10 to Trustee by **XXXXX xx, 2020**.

9. [20-23904-E-13](#)
[DPC-1](#)

LUIGI CHRISTENSEN
Jennifer Lee

**CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY TRUSTEE
DAVID P. CUSICK
9-23-20 [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 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 and Debtor’s Attorney on September 23, 2020. 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.

The Objection to Confirmation of Plan is **XXXXX.**

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

- A. The Plan fails the liquidation analysis.
- B. Debtor failed to list payment to Debtor's Attorney.
- C. Debtor completed an unauthorized sale of estate property.

DISCUSSION

Trustee's objections are well-taken.

Debtor Fails Liquidation Analysis

Debtor's plan fails the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Trustee states that Debtor's non-exempt equity totals \$118,481.71 which is primarily for \$1,702, household goods, \$420.00 monies in bank accounts, and \$116,359.71 in retirement. The Plan proposes to pay a 0% dividend to unsecured claims. Thus, Debtor fails the Chapter 7 Liquidation Analysis.

Debtor Failed to List Payment of Debtor's Attorney

Trustee reports that Debtor failed to disclose a prior payment made to Debtor's Attorney. 11 U.S.C. § 1325(a)(1) provides for confirmation of a plan if it complies with Chapter 13 provisions and other applicable Code provisions. Here, Debtor did not list that his attorney was paid \$2,500.00 prior to the filing of the Voluntary Petition. Therefore, Trustee must oppose a "No Look" fee unless (1) the Debtor amends the Statement of Financial Affairs to list the attorney and the \$2,500.00 amount paid, or (2) the Attorney disclosure statement is corrected if the \$2,500.00 fee was not paid.

Debtor Completed an Unauthorized Sale of Estate Property

Trustee also opposes confirmation of the plan on the basis that a possible unauthorized transfer of estate property took place that is subject to avoidance under 11 U.S.C. § 549(a). Debtor admitted at the Meeting of Creditors that he sold a 1970 Chevrolet for \$20,000.00 on September 15, 2020. The petition was filed on August 11, 2020. Therefore, Trustee asserts that Debtor is not seeking confirmation of the plan in good faith nor is Debtor complying with the plan. 11 U.S.C. §§ 1325(a)(3) and 1325(a)(6). ^{FN.1.}

 FN. 1. This is Debtor's third recent bankruptcy case with the following two prior cases: Chapter 13 case 19-25521 filed on September 1, 2019, and dismissed on January 17, 2020; and Chapter 13 case 20-20825, filed on February 13, 2020, and dismissed on July 1, 2020.

If there is an avoidable post-petition transfer, the fiduciary obligations of the Debtor to avoid that transfer and preserve such avoided transfer for the benefit of the bankruptcy estate (and not the Debtor) raise significant fiduciary duty issues for Debtor and action to be taken. 11 U.S.C. §§ 549, 551

At the hearing, Debtor reported that an amended Schedule C to exempt the retirement account. The Trustee agreed to continue this hearing to afford the Debtor time to prosecute this plan.

Debtor's Opposition

On November 11, 2020 Debtor filed a Opposition to Trustee's Objection on the basis that Debtor has filed an Amended Schedule C providing for exemption of Debtor's retirement account and thus resolving the liquidation issue. Dckt. 37. Moreover, Debtor argues that the \$2,500 "no look" fee was not required to be listed because the funds were received outside the one-year period referenced on question #16 on the Statement of Financial Affairs. *Id.*, ¶ 2.

Lastly, Debtor asserts there was no bad faith regarding the sale of estate property and has filed a Motion to Approve Sale *Nunc Pro Tunc* of the 1970 Chevrolet Malibu. ^{FN.2.}

FN. 2. As recently explained by the Supreme Court, consistent with prior rulings of the Ninth Circuit Court of Appeals, the relief requested concerning the vehicle is for retroactive authorization, not *nunc pro tunc* (which is a legal principal that allows the court to correct the error in an order that was issued or not documented in writing so that it is consistent with what was actually ordered by the court in the past. *Roman Catholic Archdiocese of San Juan v. Feliciano*, 140 S. Ct. 696, 2020 U.S. LEXIS 1356 (2020)).

December 8, 2020 Hearing

Amended Schedule C claims an exemption of \$47,629.69 in the Vanguard 401k and \$68,730.02 in the Upoint asset, each pursuant to California Code of Civil Procedure § 703.140(b)(10)(E). ^{FN.2.}

FN. 2. California Code of Civil Procedure § 703.140(b)(10)(E) provides:

(b) The following exemptions may be elected as provided in subdivision (a):

...

(10) The debtor's right to receive any of the following:

...

(E) A payment under a stock bonus, pension, profit-sharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, unless all of the following apply:

(i) That plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's rights under the plan or contract arose.

(ii) The payment is on account of age or length of service.

(iii) That plan or contract does not qualify under Section 401(a), 403(a), 403(b), 408, or 408A of the Internal Revenue Code of 1986.

The Motion for Retroactive Authorization to Sell the vehicle was filed on November 11, 2020. Dckt. 34. The Trustee's response notes that the vehicle was sold for \$20,000.00, with the Debtor claiming

an exemption of \$12,912.90, which leaves \$7,087.10 of non-exempt proceeds that should be paid into Debtor's plan for creditors. The Trustee does not oppose approval of the sale so long as it is conditioned on the Debtor being required to fund the plan with the non-exempt portion of the sale proceeds.

At the hearing, **XXXXXXXXXXXXXX**

10. **18-27506-E-13**
PLC-6

CHRISTA HYLEN
Peter Cianchetta

MOTION TO MODIFY PLAN
10-23-20 [176]

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 October 23, 2020. By the court's calculation, 46 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is XXXXXX.
--

ORDER FOR CONDITIONAL DISMISSAL OF CASE

The court entered its order conditionally granting the Trustee's Motion to Dismiss this case unless the Debtor was current on all plan payments as of October 26, 2020. Dckt. 181. The Chapter 13 Trustee reports that Debtor did not become current within the time period ordered by the court. The Chapter 13 Trustee requests that the court issue the order dismissing this case. Dckt. 185.

At the hearing **XXXXXXX**

REVIEW OF MOTION

The debtor, Christa Lynne Hylen (“Debtor”) seeks confirmation of the Modified Plan to deal with unexpected changes in her family finances due to unemployment during Covid. Declaration, Dckt. 178. The Modified Plan provides monthly payments of \$670.00 commencing October 25, 2020, and a zero (0) percent dividend to unsecured claims totaling \$78,965.00. Modified Plan, Dckt. 179. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on November 23, 2020. Dckt. 182. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor is unable to pay.
- B. Plan exceeds the number of months proposed.
- C. Plan payment is insufficient to pay dividend plus Trustee fees.

DISCUSSION

Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Trustee argues that Debtor may not be able to pay on the basis that Debtor has a long history of defaults and, overall, Debtor has only been able to make a monthly payment of \$187.26 since Debtor has only made 8 out of the 23 payments due in the case.

Moreover, according to Trustee, the proposed plan payments are not sufficient to pay the monthly dividend to the Class 2 creditor of \$581.48 and administrative expenses of \$66.67, plus Trustee fees which would be approximately \$688.00.

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

Failure to Complete Plan Within Proposed Time

Debtor is in material default under the Plan because the Plan will complete in more than the proposed 84 months permitted under the CARES Act. According to the Chapter 13 Trustee, the Plan will complete in 89 months due to the car claim, attorney fees, and Trustee fees. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

~~The Modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 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 Modified Chapter 13 Plan filed by the debtor, Christa Lynne Hylen (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

11. [20-22315-E-13](#) **HEIDI ADCOCK ARASOMWAN** **CONTINUED MOTION TO CONFIRM**
[NUU-1](#) **Chinonye Ugorji** **PLAN**
9-7-20 [\[31\]](#)

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 7, 2020. 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 XXXXX.
--

The debtor, Heidi Francis Adcock Arasomwan (“Debtor”), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly plan payments of \$2,772.00 for four (4) months and monthly plan payments of \$2,885.00 for 56 months and a zero (0) percent dividend to unsecured claims totaling

\$123,688.00. Amended Plan, Dckt. 34. 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 6, 2020. Dckt. 50. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor is delinquent in plan payments.
- B. The Plan contains an improper modification of a claim secured by Debtor’s primary residence.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is \$5,657.00 delinquent in plan payments, which represents multiple months of the \$2,772.00 plan payment. According to the Chapter 13 Trustee, the Plan in § 2.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor filed a Reply on October 14, 2020 asserting that a payment of \$2,772.00 was made to the Trustee and another payment of \$2,885.00 will be made on October 16, 2020 to cure the remaining delinquency. Dckt. 56.

At the October 20, 2020 hearing, the Trustee reported that the Debtor is still delinquent, with no payment in September 2020. The amount of the delinquency is computed to be \$5,657.00 (not including the October 2020 payment to come due).

Modification of an Obligation Secured Only by Principal Residence

Creditor argues that Debtor’s Plan is an improper modification of a claim secured only by a security interest in real property that is Debtor’s principal residence because the Ensminger Provisions have been altered.

Creditor has filed a Proof of Claim indicating a secured claim in the amount of \$473,397.61, secured by a deed of trust against the property commonly known as 170 Aviator Circle, Sacramento, California. Debtor’s Schedules indicate that this is Debtor’s primary residence. This modification violates 11 U.S.C. § 1322(b)(2), which prohibits the modification of an obligation secured only by Debtor’s residence.

In the Reply, Debtor requests the court to authorize the following “Ensminger Provisions” as proposed by the Trustee and to be inserted in the Order Confirming this Plan:

7.02.1 Secured Claim Treatment

Confirmation of this plan provides for adequate protection of New Rez LLC dba Shellpoint Mortgage Servicing's interest in the collateral pending either the consensual modification of the Secured Claim or termination of the automatic stay and surrender of the Collateral as provided in Section 7.02. Confirmation of the Plan does not modify the secured claim of New Rez dba Shellpoint Mortgage Servicing.

Upon denial of a loan modification and Debtor's failure to timely file and serve a proposed modified plan and motion to confirm as provided in this Section 7.02, the treatment of New Rez LLC dba Shellpoint Mortgage Servicing's secured claim is:

- A. New Rez LLC dba Shellpoint Mortgage Servicing's secured claim is a Class 3 Claim, with the added requirement that an order modifying the automatic stay must be obtained (which order documents that the denial of loan modification condition subsequent has occurred);
- B. The Chapter 13 Trustee shall continue to make the adequate protection payments to Secured Creditor from the regular monthly plan payments made by Debtor under this Plan until terminated by:
 - 1. Debtor filing and serving a modified plan and motion to confirm which provides for other treatment of New Rez LLC dba Shellpoint Mortgage Servicing's secured claim.
 - 2. The Court enters an order modifying the automatic stay as provided in this Section 7.02 or
 - 3. Order further order of the court.

The proposed Plan provides in ¶ 7.03 for the payment of a monthly adequate protection payment of \$2,238.00.

At the hearing, the Trustee agreed to a continuance to afford Debtor the opportunity to become current, or the Counsel for Debtor to document for Trustee that Debtor is current.

November 17, 2020 Status Report

Trustee filed a Status Report on November 17, 2020 informing the court that made payments toward curing the delinquency since the last hearing but that Debtor is still delinquent \$3,870.00 Dckt. 64.

November 24, 2020 Hearing

At the hearing, the Trustee reported that the payment has not been received. The Debtor reports that the payments through October 2020 are “in the mail.”

The court continues the hearing one last time, with the Debtor having to be current on all required plan payments as of December 3, 2020 (which includes the payment due by November 25, 2020). On December 4, 2020, the Trustee will file a declaration advising the court whether the Debtor is current as of December 3, 2020. If current, the court will grant the motion and confirm the plan, as amended to include an Ensminger Provision for seeking a loan modification. If the Debtor is not current, the Motion will be denied.

December 8, 2020 Hearing

On December 3, 2020, the Trustee filed a Supplemental Declaration. Dckt. 69. The testimony includes that the last payments received by the Trustee from Debtor were on November 30, 2020, with the total payments received being \$16,858.00. Declaration, ¶ 3; *Id.* The Trustee computes that the total payments due under the Plan as of November 30, 2020 is \$19,743.00 and that the Debtor is in default under the proposed plan. *Id.*, ¶ 5.

At the hearing, xxxxxxxxxxxxxxxx

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, Chapter 13 Trustee, and Office of the United States Trustee on November 13, 2020. By the court's calculation, 25 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 XXXXX.

Stearns Lending LLC ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Creditor's claim is improperly classified as a Class 4 claim.

DISCUSSION

Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts \$4,930.67 in pre-petition arrearage. The Plan does not propose to cure those arrearage. The Plan lists this claim as a Class 4 claim to be paid directly by Debtor. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) &

(5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearage.

Debtor filed a Response on December 1, 2020 arguing that the “arrearage” list by Creditor is a projected escrow shortage and not for missed payments. Dckt. 32. Debtor informs the court that they are currently working with Creditor’s counsel to resolve this matter and request the court continue the hearing two weeks to allowed for further discussions.

At the hearing, xxxxxxxxxxxxxxxx

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 Stearns Lending LLC (“Creditor”) holding a secured claim 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 xxxxx.

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 22, 2020. By the court's calculation, 49 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is XXXXX.

The debtor, Ronald Gadreault ("Debtor") seeks confirmation of the Modified Plan because Debtor's wife (the non-debtor spouse) went without employment for six weeks due to COVID-19 and Debtor incurred unexpected medical expenses due to his son's injury. Declaration, Dckt. 97. The Modified Plan provides Debtor will resume plan payments at \$1,921.79 a month, with 0% to unsecured creditors, and \$1,219.31 to Class 2 Creditor Golden One Credit Union. Modified Plan, Dckt. 96. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), holding a secured claim filed an Opposition on October 23, 2020. Dckt. 101. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor is delinquent in plan payments.
- B. Debtor cites no legal authority for modified plan.

C. Debtor has not filed Supplemental Schedules I or J.

DISCUSSION

Delinquency

Debtor is \$1,921.79 delinquent in plan payments, which represents more than one month of the \$1,710.00 plan payment. Before the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Legal Authority

Debtor's motion does not cite legal authority for which the motion is based, and therefore does not comply with Local Rule 9014-1(d)(3)(A).

Feasibility

Debtor has not filed Supplemental Schedules I and J in support of assertions regarding current income and expenses. Debtor states in his motion that he will file the amended schedules to show that the plan is feasible. Debtor's proposed modified plan increases plan payments to \$1,921.79 but Debtor's previous Schedules I and J state a monthly net income of \$1,717.82. Therefore, it appears Debtor cannot afford to make plan payments, as required under 11 U.S.C. § 1325(a)(6).

Supplemental Pleadings Filed by Debtor

Debtor filed a Supplement to the Motion on November 3, 2020. Dckt. 108. Debtor argues that his Declaration shows that circumstances have changed which necessitate a modified plan, namely that due to COVID-19 his spouse's income has been reduced and that Debtor incurred medical expenses after his son broke his wrist. *Id.*, at 1. The Supplement also expressly cites to 11 U.S.C. § 1329 as the legal authority for such modification and applicable case law.

Debtor also filed a Reply on November 3, 2020. Dckt. 110. Debtor asserts that Supplemental Schedules I and J have been filed which show that he can afford the proposed plan and that a payment of \$1,550 was submitted on TFS on October 29, 2020, and a second payments of \$2,293.58 that will go through on November 8, 2020 was scheduled through TFS. *Id.*, at 1.

Debtor argues the scheduled payment should make him current under the proposed plan. *Id.* Debtor filed Exhibits 1 through 4 in support of the Response. Dckt. 106. Exhibits 3 and 4 are "screenshots" of the TFS payments reflecting the payment made and the payment scheduled for November 8, 2020.

Further, Debtor filed Amended Schedules on November 3, 2020. Dckt. 104. Amended Schedule I and Schedule J reflect a monthly net income of \$1,931.34. *Id.*, at 8.

At the hearing, counsel for the Debtor stated that the Debtor was current. The Trustee reported that the Debtor is delinquent. The Trustee agreed to a short continuance. The Debtor has filed an Amended Schedule I and J, addressing the Trustee's opposition. These address the Trustee's issues on the Schedules.

At the hearing, **xxxxxxxxxxxxxxxx**

14. [20-23023-E-13](#)
[MET-1](#)

BARBARA DANIELS
Mary Ellen Terranella

MOTION TO MODIFY PLAN
10-19-20 [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.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 19, 2020. By the court's calculation, 50 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is xxxxx.

The debtor, Barbara Nell Daniels ("Debtor") seeks confirmation of the Modified Plan to account for her son no longer contributing \$275.00 for the car payment that was in accident and was deemed a total loss by the insurance company. Declaration, Dckt. 28. The Modified Plan provides:

1. monthly payments of \$912.00 for 3 months,
2. monthly payments of \$637.00 for 27 months, followed by
3. monthly payments of \$472.00 for 30 months, and
4. a 5 percent dividend to unsecured claims totaling \$274,333.00.

Modified Plan, Dckt. 26. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on November 19, 2020. Dckt. 46. Trustee opposes confirmation of the Plan on the basis that the Plan fails to include a provision for insurance proceeds to be treated as a plan payment.

DISCUSSION

Insurance Proceeds

Trustee states having received \$16,246.93 from State Farm Mutual Insurance Company on October 16, 2020. The Plan states that a \$14,128.64 payment out of the insurance proceeds is to be paid to Class 2 creditor GM Financial. However, Trustee argues that the plan makes no provision for the proceeds to be treated as a plan payment.

Trustee requests that the insurance proceeds be treated as an "other payment" under Section 2.02 of the plan and for this to be included in the order confirming the plan.

At the hearing, ~~XXXXXXXXXXXXXXXXXX~~

~~The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.~~

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Barbara Nell Daniels ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on October 19, 2020, and as amended with the following

~~Insurance proceeds in the amount of \$16,246.93 to be treated as an
"other payment" under Section 2.02 of the plan~~

~~is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

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, Chapter 13 Trustee, and Office of the United States Trustee on October 22, 2020. By the court's calculation, 47 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.
--

Quicken Loans, LLC fka Quicken Loans Inc. ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that the Plan fails to provide for Creditor's arrearage.

DISCUSSION

Creditor's objections are well-taken.

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts \$16,048.64 in pre-petition arrearage. The Plan does not propose to cure those arrearage, but only for providing future ongoing payments as a Class 4 Claim. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearage.

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 Quicken Loans, LLC fka Quicken Loans Inc. (“Creditor”) holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on November 10, 2020. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.
--

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

- A. Plan relies on Motion to Value a Secured Claim not yet heard or granted.
- B. Plan misclassifies a secured claim.
- C. Debtor has not filed amended Schedules to reflect recent financial changes.

DISCUSSION

Trustee's objections are well-taken.

Debtor's Reliance on Motion to Value Secured Claim

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of AmeriCredit Financial Services, Inc. dba GM Financial. Debtor filed the Motion which was set for hearing on November 10, 2020. The Motion was granted and the secured claim was valued at \$15,397.00 as requested by Debtor. Thus, this objection is resolved in favor of Debtor.

Feasibility

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). According to Trustee, Debtor testified at the Meeting of Creditors that now she is employed, she is no longer receiving the \$1,256.67 in Worker's Compensation income. Trustee requested Debtor file supplemental Schedules I and J but Debtor has failed to do so.

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

Moreover, as stated in Creditor Quicken Loan's Objection to Confirmation, the Debtor failing to provide for curing the arrearage of Creditor's claim, the Plan does not comply on those grounds and thus 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, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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 October 13, 2020. By the court's calculation, 56 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

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

The debtor, Robert Lee Toole ("Debtor") seeks confirmation of the Modified Plan to account for a significant decrease in the amount of overtime Debtor now receives. Declaration, Dckt. 22. The Modified Plan provides payments of \$1,115 for 60 months, and a 27 percent dividend to unsecured claims totaling \$151,272.13. Modified Plan, Dckt. 24. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on November 19, 2020. Dckt. 27. Trustee opposes confirmation of the Plan on the basis that Debtor fails to adequately address changes in income and expenses.

DISCUSSION

Feasibility

Debtor may not be able to comply with all the requirements of 11 U.S.C. § 1325(a). According to the Trustee, Debtor's income has a significant reduction with Debtor explaining that it is the result of less overtime, even though the overtime only decreased by \$1,500. Additionally, Trustee notes that Debtor has increased expenses but fails to explain the changes, specifically as it pertains to the mortgage payment, utilities, food and entertainment. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

On December 1, 2020, Debtor filed a Response and his Declaration addressing Trustee's concerns. Dckts. 30, 31. Debtor testifies that the decrease in income is the result of less overtime and the pay cuts received by State of California employees in July 2020. *Id.*, ¶ 3.

Debtor further testifies that the increase in the mortgage payment was an error and that Trustee is correct that the accurate amount of the mortgage is \$870.00. *Id.*, ¶ 4. Further, Debtor suggests adding the difference between the \$1,300 listed in the supplemental budget and the correct mortgage amount, which results in \$430.00, to his modified plan payment beginning December 2020. *Id.*

Lastly, Debtor explains that the increase in food and utilities is the result of being at home now that he is not working as much overtime and his "other payments" have decreased because he is no longer contributing support to his adult children. *Id.*, ¶ 5.

Debtor addressing Trustee's concerns, the Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Robert Lee Toole ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on October 13, 2020, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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 and Debtor's Attorney on November 9, 2020. By the court's calculation, 29 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 overruled and the Plan is confirmed.
--

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

- A. Debtor has not filed all required tax returns.
- B. The Plan exceeds the maximum amount of time allowed under the Bankruptcy Code.

DISCUSSION

Failure to File Tax Returns

Debtor admitted at the Meeting of Creditors that the federal income tax return for the 2019 tax year has not been filed still. Filing of the return is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Debtor filed a Response on November 18, 2020. Dckt. 19. Debtor states that the 2019 tax returns have been filed and a copy has been provided to the Trustee, which also shows that a refund of \$2,798.00 is due to Debtor. *Id.*, ¶ 2.

Plan Exceeds 60 Months

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to Trustee, the Plan will complete in 64 months due to the Internal Revenue Service having filed a priority claim in the amount of \$9,041.24, where Debtor only listed \$3,000. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

In their Response, Debtor further states that once the Internal Revenue Service reduces their claim (now that the 2019 tax return has been filed), Debtor will be able to make all of the plan payments within the 60 months required. *Id.*, ¶ 3.

Decision

The Trustee has filed a Status Report for this Contested Matter, advising the court that the Trustee has received a copy of the tax return which shows the refund. Though the Internal Revenue Service has not yet amended its return, the Trustee states, “The Trustee believes that the returns have been filed and the claim should be amended so that the Plan will complete within 60 months.” Status Report, p. 2:3-4; Dckt. 21.

The Debtor representing to the court, Chapter 13 Trustee, and parties in interest that a tax return has been filed and if properly computed Debtor is entitled to a substantial refund, Debtor has addressed the Objection. (If the tax return has not been properly computed, then having to address that and seek a modified plan in the future would not be “unanticipated.”)

At the hearing, **XXXXXXX**

The Plan complies with 11 U.S.C. §§ 1322 and 1325(a). The Objection is overruled, and the Plan is confirmed.

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

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

The 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 the Chapter 13 Plan is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David

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

19. [19-27459-E-13](#)
[MWB-6](#)

CYNTHIA ROSS
Mark Briden

**MOTION FOR RETROACTIVE ORDER
TO EMPLOY CENTURY 21 AS
REALTOR(S)
11-4-20 [\[118\]](#)**

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, (most of the) creditors, parties requesting special notice, and Office of the United States Trustee on November 4, 2020. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Motion to Employ 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 Employ is xxxxxxx.
--

Cynthia Leeann Ross ("Debtor") seeks retroactive authorization to employ Ellen Nielsen of Century 21 Hilltop ("Realtor"). Realtor assisted Debtor in selling Debtor's residence located at 5900 Bell Road Redding ("Property") for \$300,000.

Ellen Nielsen, a realtor of Century 21 Hilltop, testifies that she assisted Debtor in selling the Property for \$300,000, sale which was approved by the court on October 27, 2020. Declaration, Dckt. 119. Ellen Nielsen further testifies she and the company do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys. *Id.*

Debtor requests judicial notice of the California Residential Estate Contract and Joint Escrow Instructions filed as Exhibit 1, Dckt. 98, filed in connection with the Motion to Sell (DCN: MWB-5) to supplement the information regarding Realtor's commission and terms of employment. Response, Dckt. 132.

Debtor has estimated that a six (6) percent broker's commission from the sale of the Property will equal approximately \$18,000. Realtor acted as realtor for both Debtor and Buyer.

Trustee filed a Response where Trustee does not oppose the employment but requests the court consider that not enough information has been provided by Debtor regarding Realtor's compensation and that the Exhibits referred to were not served in conjunction with the motion. Dckt. 128.

DISCUSSION

Pursuant to § 327(a), a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Moreover, section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

However, in this case, Debtor seeks retroactive authorization for employing Realtor but fails to provide this court with the applicable law that permits a bankruptcy court to take such retroactive actions. Debtor also fails to provide the court with the Employment Agreement. Debtor refers to a six (6) percent commission of \$18,000 and argues that creditors were informed of such commission but the court is unable to locate any such information in the relevant pleadings related to this sale.

Looking back at the Purchase Agreement filed in support of the motion to sell, Dckt. 98, the court notes that it is not the entire Agreement, but merely select pages. It is unclear why only select pages would be provided to the court and parties in interest, and other pages would be kept "secret" from the court. In the pages provided, no provision is made for the payment of any real estate commissions (either for the sellers' or the buyers' real estate brokers).

Further, no written contract for Debtor to employ a real estate broker has been provided in support of the Motion. It is not clear if such contractual relationship exists and who will be seeking to be paid such amounts.

In Ellen Nielsen's declaration, Dckt. 119, she testifies that she is a real estate agent, employed "with" Century 21 Hilltop," the apparent real estate broker. Ms. Nielsen states that she (not Century 21 Hilltop) entered into an Agreement with the Debtor to sell the Property. However, she does not provide such Agreement. The Declaration does not provide testimony of what the sought compensation is and who will share in the monies.

As referenced above, the Motion does not state any grounds upon which retroactive approval of the employment agreement that is not provided can be authorized retroactively. Only that there was some agreement, a copy of which is not provided, and that relief should be granted.

The Motion expressly requests that the court authorize compensation as provided in Exhibits 1 through 5 filed in support of the Motion to Sell. Those Exhibits, Dckt. 98, do not provide for any compensation to be paid. Exhibits 1 through 5 consist of the following:

Exhibit 1 – Page 1 of 10 of Residential Purchase Agreement and Joint Escrow Instructions

On Page 1 it is disclosed that Century 21 Hilltop is the broker and Ellen Nielsen is the agent, representing both the Debtor as seller and the buyer. No provision is made for any commission, fees, or expenses are provided for the real estate broker or agent. Dckt. 90 at 3.

Exhibit 2 – Page 2 of 10 of Residential Purchase Agreement and Joint Escrow Instructions

On Page 2 no provision is made for the payment of any commission, fees, or expenses for a real estate broker or agent. *Id.* at 4.

Exhibit 3 – Page 3 of 10 of Residential Purchase Agreement and Joint Escrow Instructions

On Page 3 provision is made for the payment of various escrow costs and expenses, but no provision is made for the payment of any commission, fees, or expenses for a real estate broker or agent. *Id.* at 5.

Exhibit 4 - Page 1 of 1 of Text Overflow Addendum No. 1

On this page, a contingency of buyer having to sell buyer's home is stated. *Id.* at 6.

Exhibit 5 – Page 1 of 1 of Addendum

On this page, one of the buyers named in the Purchase Agreement is removed for the stated reason of complying with the requirements for a 1031 exchange. *Id.* at 7.

For the documents cited by Debtor in the Motion for Retroactive Employment, no basis of compensation is shown.

At the hearing, **XXXXXXXXXXXXXXXXXX**

Ex Parte Motion to Amend Order Authorizing Sale of Property

On November 18, 2020, Debtor filed an Ex Parte Motion to Amend the Order Authorizing the Sale of the Property. Dckt. 125. The requested amendment is modest, to provide that the Chapter 13 Trustee hold the \$8,000.00 set aside for payment of real estate commissions, if any, if the court authorizes the employment of a real estate broker and approves compensation. It is stated that the escrow has advised Debtor that it would not hold the monies as stated in the order authorizing the sale.

No proposed order was lodged with the court and the Clerk's Office left a telephonic message for Debtor's counsel that such a notice was required. November 23, 2020 Docket Entry. As of the court's December 6, 2020 review of the proposed order inbox, no order had been lodged with the court.

At the hearing, **XXXXXXX**

~~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 Employ filed by Cynthia Leeann Ross (“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 Employ is **XXXXXXX**, and Debtor is authorized to employ Ellen Nielsen, of Century 21 Hilltop, as Real Estate Agent, for Debtor on the terms and conditions as set forth in the **Name of Agreement** filed as Exhibit **xx**, Dckt. **xx**.~~

~~**IT IS FURTHER ORDERED** that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.~~

~~**IT IS FURTHER ORDERED** that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.~~

~~**IT IS FURTHER ORDERED** that except as otherwise ordered by the Court, all funds received by realtor in connection with this matter, regardless of whether they are denominated a retainer or are said to be nonrefundable, are deemed to be an advance payment of fees and to be property of the estate.~~

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 and Debtor's Attorney on November 10, 2020. By the court's calculation, 28 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 overruled.
--

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that Debtor failed to appear at the November 5, 2020 Meeting of Creditors.

DISCUSSION

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

The Continued Meeting of Creditors was held on December 3, 2020, and Trustee's Report indicates Debtor appeared. As of the court's December 6, 2020 review of the Docket, the Trustee has filed nothing further, and the court therefore determines that Debtor's appearance has resolved this Objection.

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, 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 Jourdon Soonie Slone’s (“Debtor”) Chapter 13 Plan filed on September 30, 2020, is confirmed. 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.

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, Creditor, and Office of the United States Trustee on November 2, 2020. By the court's calculation, 36 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Value Collateral and Secured Claim of Schools Financial Credit Union ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$7,759.00.

The Motion filed by Ricardo Lozano Flores ("Debtor") to value the secured claim of Schools Financial Credit Union ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 15. Debtor is the owner of a 2014 Ford Focus SE Hatchback 4D ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$7,759.00 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 filed a Response stating the Trustee does not oppose the motion but notes that Creditor has not filed a Proof of Claim and the First Meeting of Creditors is scheduled for December 10, 2020 and Debtor's first plan payment will come due December 25, 2020. Dckt. 23.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on November 6, 2017, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$12,372.39. Declaration, Dckt. 15. 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 \$7,759.00,

the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue 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 Ricardo Lozano Flores (“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 Schools Financial Credit Union (“Creditor”) secured by an asset described as 2014 Ford Focus SE Hatchback 4D (“Vehicle”) is determined to be a secured claim in the amount of \$7,759.00, 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 \$7,759.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

Final Ruling: No appearance at the December 8, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, and Office of the United States Trustee on November 2, 2020. By the court's calculation, 36 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 Travis Credit Union ("Creditor") is granted, and, pursuant to the Stipulation (Dckt. 20) Creditor's secured claim is determined to have a value of \$10,031.00.

The Motion filed by Ricardo Lozano Flores ("Debtor") to value the secured claim of Travis Credit Union ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 11. Debtor is the owner of a 2015 Dodge Grand Caravan SE Minivan 4D ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$9,674.00 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 does not oppose Debtor's motion but notes that the first meeting of creditors is scheduled for December 10, 2020 and Debtor's first plan payment will come due December 25, 2020. Dckt. 21.

On November 17, 2020, Debtor and Creditor filed a Stipulation resolving the dispute on this valuation and have stipulated that the value of the Vehicle for the purposes of the Chapter 13 plan is \$10,031.00. Dckt. 20.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on January 30, 2018, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$14,469.51. Proof of Claim, No. 1. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of \$10,031.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue 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 Ricardo Lozano Flores ("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 Travis Credit Union ("Creditor") secured by an asset described as 2015 Dodge Grand Caravan SE Minivan 4D ("Vehicle") is determined to be a secured claim in the amount of \$10,031.00, per the Stipulation filed on November 17, 2020, 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 \$10,031.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

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

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 October 28, 2020. By the court's calculation, 41 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 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).

<p>The Motion to Confirm the Plan is XXXXX.</p>

The debtor, Rakeshni Devi Sharma ("Debtor") seeks confirmation of the Chapter 13 Plan. The Plan provides payments of \$2,500 for the first three months, followed by payments of \$3,500 for the remainder of the plan, and a 100 percent dividend to unsecured claims totaling \$8,662.75. Plan, Dckt. 104. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CREDITOR'S OPPOSITION

Charmaine Mark and Matthew Mark as Trustees for USRE Trust ("Creditor"), filed an Opposition on October 30, 2020. Dckt. 106. Creditor opposes confirmation of the Plan, and in the alternative requests dismissal of the case, on the basis that:

- A. Creditor is not adequately protected.
- B. Section 7.14 is vague as Debtor's payment of Creditor's claim.
- C. Debtor's delay to refinance is unreasonable and prejudicial to creditors.

Creditor also notes that the case is already six months old and Debtor has failed to timely file a new plan, and only after the trustee filed a Motion to Dismiss. Opposition, ¶ 4; Dckt. 106.

Additionally, that since this case was filed on July 14, 2020, only one payment has been received on its secured claim, with \$1,800 having been received on July 14, 2020. *Id.*, ¶ 1. No declaration providing testimony of this asserted fact is provided. Reference is made to Exhibit A filed with the Opposition. That is an unauthenticated exhibit that appears to be a Statement of Account for or from Superior Loan Servicing. Dckt. 107.

No evidence appears to be presented as part of Creditor's opposition.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on November 24, 2020. Dckt. 116. On November 25, 2020, Trustee filed an Amended Opposition. Dckt. 119. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor is improperly altering the rights of USRE Trust, a claim secured by Debtor's primary residence by failing to provide adequate protection payments for Class 1 creditor USRE Trust.

DISCUSSION

Creditor alleges that the Plan violates 11 U.S.C. § 1325(a)(5)(B)(iii)(II) because the amount of the periodic payments it proposes to pay Creditor are insufficient to provide it with adequate protection during the period of the Plan.

Creditor asserts it is entitled to a \$2,754.67 monthly payment based on the original rate under the note. The Plan provides only for a \$1,800 in June 2020 to \$2,700 in July 2020 monthly payment.

On the same note, Trustee argues that Debtor's Plan is an improper modification of a claim secured only by a security interest in real property that is Debtor's principal residence. Creditor has filed a Proof of Claim indicating a secured claim in the amount of \$347,474.47, secured by a first deed of trust against the property commonly known as 7101 Lyndale Circle, Elk Grove, California. Debtor's Schedules indicate that this is Debtor's primary residence. This modification violates 11 U.S.C. § 1322(b)(2), which prohibits the modification of an obligation secured only by Debtor's residence.

Debtor filed his Reply to the Trustee's Opposition on December 2, 2020. Dckt. 125. Debtor first addresses that the reason for the delay in refinancing the real property is based on the FHA refinance requires a minimum of 12 months after confirmation of a plan and a 12 months timely trustee payment record. Debtor further argues that

The automatic provisions of the Ensminger strategy are not applicable. The balloon payment of \$2.02 as adopted in Section 7.02 is simply due in February of year 2022, which is month 21 of the case, about 14 months from today. Till then the trustees of purported USRE Trust are bound by the plan so long as the debtor is performing under the plan.

Reply, at 3: 8-13.

Debtor then raises doubt as to whether Creditor has a secured or unsecured claim but that regardless of such status issues, Creditor is adequately protected because they will be paid \$2,700. *Id.*, at 3:16-19. Debtor states no opposition to changing the payment amount from \$2,700 to \$2,754.67. *Id.*, at 4:1-3. Further adding that Creditor has not pressed in pursuing the default rate of interest payment but are taking the position that the note payment is \$2,754.67. *Id.*, at 4:11-15.

Though stating that Creditor is not pursuing the default rate, Debtor argues that the total interest rate of 16.99 as the default rate of interest is “simply shocking” and that section 1322(b)(2) and class 1 “have in mind” were long term 30 year type of loans where there are no default rates of interest. *Id.*, at 5:15-18. Debtor further asserts that the plan is reasonable “because the limits of reasonableness would allow modification to say 5.5% interest, capitalize the arrears, with balloon payment due at year 5 of the case.” *Id.*, at 5:20-24. After reviewing several articles related to the default rate, Debtor argues that it would be “dubious” for Creditor to press the issue of whether section 1322(b)(2) apply for owner occupied residences. *Id.*, at 7:19-22.

Lastly, out of nowhere, Debtor asserts that the plan is “reasonable in light of some courts which utilize 11 USC §305 to simply suspend payments under some circumstances.” *Id.*, at 7:24-26.

However, Debtor has stated having no opposition to amending the payment from \$2,700 to \$2,754.67, and has explained why the refinance cannot take place until twenty months into the plan.

Decision

Debtor commenced this Chapter 13 case on May 14, 2020. This follows Debtor’s prior Chapter 13 case, 20-21739, that was filed on March 24, 2020, and dismissed on April 22, 2020, in which Debtor was represented by a different attorney than the one in this case. The prior case was promptly dismissed due to the failure for Debtor to get the Schedules and other documents filed.

The Additional Provisions stating the treatment of Creditor’s secured claim are stated in Section 7 - NonStandard Provisions of the Plan titled “1st Modified Plan.” Dckt. 104 at 7. The court summarizes the proposed treatment as follows, identified by the section number used in the Plan.

§ 7.14. Debtor proposes making an adequate protection payment of \$1,800 a month, beginning July 2020 plan payment and increase to \$2,700 a month beginning with the August 2020 plan payment, continuing monthly thereafter.

The adequate protection payment is stated to be applied only to principal and interest against the secured claim of Creditor, identified as “Claim 1 in the amount of \$347,474.47.” (This is the amount stated in Amended Proof of Claim 1-2 filed by Creditor.)

§ 7.01. Debtor provides for funding the plan with monthly payments of \$2,500 for the first month of the plan, and then \$3,500 a month thereafter.

§ 7.02. In addition to the monthly plan payments, Debtor provides that Debtor shall refinance the property securing creditor’s claim no later than the 21st month of the bankruptcy case, pay Creditor’s claim and complete the Plan with a \$50,000 lump sum plan payment.

As discussed above, Debtor proposes increasing the adequate protection payment to \$2,754.67 a month, which would be the normal monthly payment.

This case having been filed on May 15, 2020, twenty one months after that would be February 2022. That would be fourteen months after a December 2020 confirmation of the Plan, which is consistent with the assertion that Debtor could not obtain a FHA refinance until at least twelve months after a Chapter 13 plan is confirmed.

In her Declaration Debtor states that payments of \$3,500.00 a month have been made to the Chapter 13 Trustee since the case was filed. With payments starting in June 2020, that would be one payment of \$2,500.00 and five payments of \$3,500.00, for a total of total \$20,000.00 as of the December 8, 2020 hearing.

In the Plan, Debtor shows monthly payments of \$490.00 being paid on the Class 2 secured claims. This is \$400 a month to pay the secured claim of Travis Credit Union (a 2018 Nissan Murano is the collateral) and \$90.00 to Sacramento County for delinquent property taxes. Plan, ¶ 3.08; Dckt. 104.

For Class 5 priority claims, the Internal Revenue Service has filed Amended Proof of Claim 6-3 stating a secured and priority claim for \$2,703.65. Spread over sixty months of a plan, this would be approximately \$50.

In computing her projected disposable income, Debtor is also paying as a Class 4 claim \$646.52 directly to Golden 1 Credit Union for a claim secured by a 2017 Chevrolet Camaro SS. *Id.*, ¶ 3.10. On Schedule J Debtor lists two adult children as dependents and a mother as a dependent. Dckt. 21 at 27. As discussed below, neither of the adult children listed as dependents nor Debtor's mother contribute to Debtor's income.

On Schedule A/B Debtor lists owning three vehicles for which she is the only owner. *Id.* at 4. Debtor does not explain why she has three vehicles and she is paying secured claims for two of them.

On Schedule I Debtor lists having substantial monthly income in the gross amount of \$11,067, which after withholding she computes to be \$7,526. *Id.* at 25-26. Debtor then says that has an additional \$900 in income, the source being identified as "Reduce tax withholdings, removed 403B, mon to help." Schedule I, ¶ 11; *Id.* at 26.

Though stating under penalty of perjury having two adult dependent children and a dependent mother, on Schedule J Debtor lists only \$500 a month for food and household supplies. Debtor lists \$500 a month for transportation, which appears to be for three vehicles (fuel, maintenance, repairs, registration), which would be \$165 each. *Id.* at 28.

Computation of Adequate Protection Payment

On Schedule A/B Debtor states that the Property securing Creditor's claim has a value of \$450,000. Dckt. 21 at 3. Creditor's secured claim of \$347,474.47 and the delinquent taxes of \$3,428.00 stated in the Plan (no proof of claim filed by Sacramento County or Debtor for Sacramento County), it would appear that there would be approximately \$99,000 of gross equity in the Property above the two liens.

If Debtor's testimony of making the required plan payments, then the Trustee should either have or be able to make the \$2,754.00 a month payments for July through November 2020, which would total \$13,500.00.

When the court has addressed a Debtor seeking to use the automatic stay either in lieu of an injunction to dispute a creditor's secured claim or to delay foreclosure while diligently prosecuting a loan modification, the court has computed an adequate protection payment based on the amount of the secured claim, amortized over thirty years, at a commercially reasonable market rate. Here, with a \$347,474.47 secured claim filed, using a 3.5% short term interest rate (which is greater than 2% to 2.5% interest rates commonly advertised), the monthly adequate protection payment would be \$1,561.54. Even raising it to 5% would be a monthly payment of \$1,866.78.

It appears that Debtor wisely chose to skew the adequate protection payment higher, making it initially \$2,500.00 and now \$2,754.00 a month in light of the loan and defaults. Between the equity cushion of \$99,000 (28.5%) and the deadline of one year for the refinance, the monthly payment of \$2,754 provides additional protection for the present value of Creditor's secured claim.

Over the pre-confirmation period of June - November 2020 and then post-confirmation period December 2020 through January 2022, the adequate protection payments will total \$53,856 (1 month of \$1,800, 5 months of \$2,700, and 14 months of \$2,754.00). The Trustee confirmed at the December 8, 2020 hearing having paid to Creditor **XXXXXXX**

It appears that the one missing element of adequate protection provision is the termination of the stay in February 2022. At the hearing **XXXXXXX**

~~Debtor having addressed Creditor's and Trustee's concerns, the Plan complies with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is confirmed.~~

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

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

~~The Motion to Confirm the Chapter 13 Plan filed by the debtor, Rakeshni Devi Sharma ("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 Chapter 13 Plan filed on October 28, 2020, as amended:~~

~~Adequate protection payments of \$2,754.67, beginning **XXXXXXX** to Creditor USRE Trust.~~

~~is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David~~

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

24. [20-22540](#)-E-13
[RJ-2](#)

RAKESHNI SHARMA
Richard Jare

**OBJECTION TO CLAIM OF INTERNAL
REVENUE SERVICE, CLAIM NUMBER 6
10-28-20 [95]**

WITHDRAWN BY M.P.

Final Ruling: No appearance at the December 8, 2020 hearing is required.

The Objection to Claim was dismissed without prejudice, and the matter is removed from the calendar.

Rakeshni Devi Sharma ("Debtor") having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Objection to Claim has been dismissed without prejudice, and the matter is removed from the calendar.**

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 Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 28, 2020. By the court's calculation, 41 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Chad M Johnson, the Attorney ("Applicant") for Paul Jorge Fraga and Jasa Ruth Ann Fraga, the Chapter 13 Debtor ("Client"), makes a First Interim Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period November 4, 2019, through October 5, 2020. The order of the court approving employment of Applicant was entered on October 11, 2020. Dckt. 25. Applicant requests fees in the amount of \$4,659.75 and costs in the amount of \$355.00. Per the Agreement between Debtor and Applicant, Applicant was paid \$1,880.00 for fees and expenses prior to the case being filed. Exhibit A, Dckt. 29.

Trustee does not oppose the requested fees. Dckt. 31.

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 general case administration and communications with debtor. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

In the Application, the “summary” of fees and expenses stated by Applicant as follows:

SUMMARY OF FEES AND EXPENSES

GENERAL CASE WORK	\$4,659.75
<u>EXPENSES</u>	<u>\$355.00</u>

TOTAL FEES:	\$4,659.75
TOTAL EXPENSES:	\$355.00

Application, p. 2:16-20; Dckt. 26.

Applicant does direct the court to read Exhibit B to identify the tasks and billing that comprise the above.

Exhibit B, Dckt. 29, is three pages in length. The first page is a chart stating that the total fees and costs are \$5,014.75 and that there was a pre-petition payment of \$1,880.00 received by Applicant. Dckt. 29 at 6.

Pages 2 and 3 of Exhibit B is a spread sheet of billings and costs, without any task analysis. *Id.* at 6-7.

Applicant’s Declaration (Dckt. 28) provides detailed testimony of the persons providing services to the Debtor, but does not include a task analysis of the legal services provided.

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Chad Johnson, Attorney	xx.xx	\$400.00	\$xxxx.xx
Tina Perez, Paralegal	xx.xx	\$185.00	\$xxxx.xx
Jennifer Walden, Office Staff	xx.xx	\$85.00	<u>\$xxxx.xx</u>
Total Fees for Period of Application			\$xxxx.xx

Applicant does not provide the time spent by each professional in the Motion. Instead, Applicant filed the billing summary as an Exhibit. No separation of time is provided for each professional. The court declines to do attorney work and calculate how much time was spent by each.

At the hearing, Applicant provided the court with the time spent by each professional ~~xxxxxxxxxx~~

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$355.00 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Creditor Report	\$45.00	\$45.00
Court Filing Fee		\$310.00
		\$0.00
Total Costs Requested in Application		\$355.00

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. ~~First Interim Fees in the amount of \$4,659.75~~ 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.

Costs & Expenses

First Interim Costs in the amount of \$355.00 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

Chapter 13 Trustee's Statement of Non-Opposition

On November 23, 2020, the Chapter 13 Trustee filed a statement that he does not oppose the court allow the interim fees and costs as requested. Dckt. 31.

~~_____ The court authorizes the Chapter 13 Trustee to pay 100% of the fees and 100% of the costs allowed by the court after applying the retainer paid by Debtor to Applicant in the amount of \$1,880.00.~~

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

_____ Fees _____	\$4,659.75
_____ Costs and Expenses _____	\$355.00

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

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

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

~~_____ The Motion for Allowance of Fees and Expenses filed by Chad M. Johnson ("Applicant"), Attorney for Paul Jorge Fraga and Jasa Ruth Ann Fraga, Chapter 13 Debtor ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing;~~

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

~~_____ Chad M. Johnson, Professional employed by the Chapter 13 Debtor;~~

~~_____ Fees in the amount of \$4,659.75~~

~~_____ Expenses in the amount of \$355.00;~~

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

~~_____ **IT IS FURTHER ORDERED** that the Chapter 13 Trustee is authorized to pay 100% of the fees and 100% of the costs allowed by this Order from the available~~

Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

IT IS FURTHER ORDERED that the Chapter 13 Trustee is authorized to pay fees and costs allowed by this Order, after allowing credit for the \$1,880.00 retainer that Applicant is authorized to apply to these allowed interim fees, from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

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 Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 28, 2020. By the court's calculation, 41 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is XXXXX.

Chad M Johnson, the Attorney ("Applicant") for Toni Hendricks Painter, the Chapter 13 Debtor ("Client"), makes a First Interim Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period April 29, 2020, through October 9, 2020. The order of the court approving employment of Applicant was entered on September 25, 2020. Dckt. 14. Applicant requests fees in the amount of \$3,740.50 and costs in the amount of \$355.00. Per the Agreement between Debtor and Applicant, Applicant was paid \$900.00 for fees and expenses prior to the case being filed. Exhibit A, Dckt. 18.

Trustee does not oppose the requested fees but notes that the Motion states Applicant was paid \$900.00 prior to the case being filed, whereas the plan states that Applicant was paid \$855.00 post-petition. Dckt. 22.

At the hearing, Applicant clarified xxxxxxxxxxxxxxxx

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 general case administration and communications with debtor. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

In the Application, Applicant provides the following detailed information concerning the fees and costs requested:

SUMMARY OF FEES AND EXPENSES

GENERAL CASE WORK	\$3,740.50
<u>EXPENSES</u>	<u>\$355.00</u>
TOTAL FEES:	\$3,740.50
TOTAL EXPENSES:	\$355.00

Application, p. 2:16-20; Dckt. 15.

Applicant directs the court to Exhibit B for an itemization of the fees and expenses. Exhibit B, Dckt. 18, is a spread sheet showing the various charges, but does not provide a task billing analysis. While providing detailed testimony about the persons providing the legal services, Applicant does not provide a task billing analysis. Dckt. 17.

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Chad Johnson, Attorney	xx.xx	\$400.00	\$xxxx.xx
Tina Perez, Paralegal	xx.xx	\$185.00	\$xxxx.xx
Jennifer Walden, Office Staff	xx.xx	\$85.00	\$xxxx.xx
Total Fees for Period of Application			\$xxxx.xx

Applicant does not provide the time spent by each professional in the Motion. Instead, Applicant filed the billing summary as an Exhibit. No separation of time is provided for each professional. The court declines to do attorney work and calculate how much time was spent by each. At the hearing, Applicant provided the court with the time spent by each professional xxxxxxxx

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$355.00 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Creditor Report	\$45.00	\$45.00
Court Filing Fee		\$310.00
		\$0.00
Total Costs Requested in Application		\$355.00

FEES AND COSTS & EXPENSES ALLOWED

Fees

~~The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First Interim Fees in the amount of \$3,740.50 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.~~

Costs & Expenses

~~First Interim Costs in the amount of \$355.00 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.~~

~~The court authorizes the Chapter 13 Trustee to pay 100% of the fees and 100% of the costs allowed by the court after applying the retainer paid by Debtor to Applicant in the amount of \$900.00.~~

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

Fees	\$3,740.50
Costs and Expenses	\$355.00

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

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

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

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

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

~~Chad M. Johnson, Professional employed by the Chapter 13 Debtor,~~

Fees in the amount of \$3,740.50
Expenses in the amount of \$355.00;

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

~~**IT IS FURTHER ORDERED** that the Chapter 13 Trustee is authorized to pay 100% of the fees and 100% of the costs allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.~~

~~**IT IS FURTHER ORDERED** that the Chapter 13 Trustee is authorized to pay fees and costs allowed by this Order, after allowing credit for the \$900.00 retainer that Applicant is authorized to apply to these allowed interim fees, from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.~~

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, and Office of the United States Trustee on October 21, 2020. By the court's calculation, 48 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 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).

<p>The Motion to Confirm the Plan is XXXXX.</p>

The debtors, Shawn Scott Dickinson and Monique Deneé Dickinson ("Debtor") seek confirmation of the Chapter 13 Plan. The Plan provides for payments of \$1,774.27 for five (5) months, followed by payments of \$1,959.00 for 55 months, and a 100 percent dividend to unsecured claims totaling \$12,237.62. Plan, Dckt. 35. 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 November 24, 2020. Dckt. 48. Trustee opposes confirmation of the Plan on the basis that:

- A. Plan is overextended.
- B. Debtor has failed to disclose child support debt.
- C. Debtor has failed to file all applicable tax returns.

DISCUSSION

Failure to Complete Plan Within Allotted Time

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in 97 months due to mortgage arrears, priority taxes, and child support are higher than scheduled. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Trustee does not know if the \$666.25 listed on Schedule I as “Domestic support obligation” is the actual ongoing payment, an arrears payment, or an amount set by Debtor. Trustee request that Debtor amend Schedules D and E/F so they may reflect domestic support obligations.

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

Failure to File Tax Returns

Debtor admitted at the Meeting of Creditors that the federal income tax return for the 2017, 2018, and 2019 tax years have not been filed still. Filing of the return is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Debtor filed a Supplemental to the Motion and a Declaration on December 4, 2020. Dckts. 53, 54. Debtors testify under penalty of perjury that:

1. Domestic Support Obligations are post-petition current, and the pre-petition arrearage is provided for under Section 3.12 of the plan.
2. All the tax returns for the last four years prior to the filing of this case have been filed.

The court notes that Debtor fails to address Trustee’s concerns regarding the unfiled tax returns. Debtor testifies that all taxes have been filed but no evidence is presented and there still is a Proof of Claim from the Franchise Tax Board for \$658.96 and a Proof of Claim from the Internal Revenue Service for \$32,826.51.

Debtor has also failed to explain the amount listed for the “Domestic Support Obligation.”

At the hearing, xxxxxxxxxxxxxxxx

~~The Plan complies / does not comply with 11 U.S.C. §§ 1322, 1323, 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 debtors, Shawn Scott Dickinson and Monique Deneé Dickinson (“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 Plan is **xxxxx**.

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, and Office of the United States Trustee on October 23, 2020. By the court’s calculation, 46 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

<p>The Motion to Confirm the Modified Plan is <u>granted</u>.</p>
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The debtor, Michael Everett Scallin (“Debtor”) seeks confirmation of the Modified Plan to make up for missed payments and extend the plan under the CARES Act. Declaration, Dckt. 141. The Modified Plan provides payments of \$844.00 commencing November 25, 2020, and a zero (0) percent dividend to unsecured claims totaling \$181,011.17. Modified Plan, Dckt. 142. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on November 20, 2020. Dckt. 145. Trustee opposes confirmation of the Plan on the basis that:

- A. Plan fails to account for a plan payment for October 2020.
- B. No explanation is provided for omission of tax refund.
- C. Debtor has not filed Supplemental Schedules I and J.

DISCUSSION

October 2020 Plan Payment

Trustee notes that Debtor's plan fails to account for the October 2020 plan payment but believes this is an oversight where Debtor's total paid in the amount of \$26,005.47 may have meant to use the total paid as the plan payment due for October 25, 2020. Trustee does not oppose correcting this through the order confirming the plan.

Payment of Tax Refund Into the Plan

The plan no longer proposes to include tax refunds over \$2,000 into the plan and Debtor has failed to explain this omission. The confirmed plan provides for the refunds. Trustee requests that Debtor provide a copy of his 2019 tax return for review.

Supplemental Schedules I and J

Trustee requests Debtor file Supplemental Schedules I and J where the last filed was over two years ago and Debtor testifies that his income was affected by the Covid-19 pandemic.

On December 3, 2020, Debtor filed a Reply and the Declarations of Michael Everett Scallin and Diana Scallin. Dckts. 149, 150, 151. Debtor agrees with Trustee regarding the October 25, 2020 payment and that it may be corrected through the order confirming the plan. Dckt. 149.

Additionally, Debtor asserts that the 2019 tax returns have been provided to Trustee and supplemental Schedules I and J have been filed. (A review of the docket shows that Debtor filed the Supplemental Schedules on December 3, 2020.)

At the hearing, Trustee informed the court ~~xxxxxxxxxxxxxx~~

Debtor testifies that supplemental Schedules I and J have been filed and that his parents will be assisting him with \$3,300 per month to ensure he completes the plan and once his commissions increase, their help will decrease in an equal amount. Dckt. 150, ¶ 2. Diana Scallin, Debtor's mother, testifies that she will be contributing \$3,300 per month to Debtor so that he may complete the bankruptcy case and that the assistance will decrease as his commissions increase. Dckt. 151.

~~Trustee's concerns having been addressed, the Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.~~

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

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

~~The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Michael Everett Scallin ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on October 23, 2020, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

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 October 20, 2020. By the court's calculation, 49 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 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).

<p>The Motion to Confirm the Plan is XXXXX.</p>

The debtor, Brad Alan Hamilton and Cherise Cathleen Williams ("Debtor") seek confirmation of the Chapter 13 Plan. The Plan provides:

1. payments of \$900.00 per month for 1 month,
2. followed by payments of \$1,050.00 per month for 59 months,
3. sale of real property 6013 Semaphore Road, Portola, CA on or before June 2020, and
4. a five (5) percent dividend to unsecured claims totaling \$87,978.07.

Plan, Dckt. 50. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CREDITOR'S OPPOSITION

Reno Real Estate Solutions ("Creditor") holding a secured claim filed an Opposition on November 21, 2020. Dckt. 65. Creditor opposes confirmation of the Plan on the basis that:

- A. Creditor is not adequately protected.
- B. The Plan was filed in bad faith.

TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David P. Cusick ("Trustee"), filed an Opposition on November 24, 2020. Dckt. 72. Trustee opposes confirmation of the Plan on the basis that:

- A. Plan depends on a sale that may overextend the life of the plan if the sale does not occur.
- B. Debtor is delinquent in plan payments.

DISCUSSION

Treatment

Creditor argues that Debtor is in violation of 11 U.S.C. § 1325(a)(5)(B)(iii)(I) which requires equal monthly installments unless creditor agrees otherwise. Debtor's Plan proposes a regular monthly payment of \$850 and then a lump sum payment in June 2022. Moreover, Creditor asserts it is entitled to a \$2,100.00 monthly payment after amortizing Creditor's claim over a 60 month plan. The Plan provides only for a \$850.00 monthly payment.

Bad Faith

Creditor alleges that the plan was filed in bad faith on the basis that Debtor has not explained the changes in expenses, namely the rental/home ownership expense, utilities, food costs, child care and educational costs, entertainment, and medical expenses.

Creditor would not oppose the plan if Debtor explained the expense discrepancies and if the sale was made earlier, such as by April 2021.

Failure to Complete Plan Within Allotted Time

Debtor is in material default under the Plan because the Plan will complete in more than the proposed sixty months. According to the Chapter 13 Trustee, the Plan will complete in 102 months if the sale of real property the plan depends on does not occur. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Delinquency

The Chapter 13 Trustee asserts that Debtor is \$150.00 delinquent in plan payments, which represents a fraction of the \$1,050.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor's Reply

On December 3, 2020, Debtor filed a Reply addressing both Trustee's and Creditor's concerns. Dckt. 74. Debtor states that the correct date for the sale of the real property is June 2022, and that after then there will be 38 months to pay \$18,013.14 in priority taxes and \$3,729.52 for a 5% dividend to general unsecured creditors, which should be feasible. *Id.*, at 1. Additionally, Debtor made the \$150 to Trustee along with the November payment and should now be current. *Id.*, at 2.

Debtor argues that there is nothing wrong with the Plan since it is a Plan "which provides for full mortgage payments and an arrearage payment pending the sale of the Residence." Reply, p. 2:7-9; Dckt. 74. In the Opposition, Creditor states in the Opposition that:

The loan [Creditor's Claim] was to be paid by monthly payments for 5 years, and then a balloon in October 2022.

Opposition, p. 1:20-21; Dckt. 65.

The Declaration of David Lysne, a managing member of Creditor, states that the pre-petition arrearage is \$14,311.69. Declaration, ¶ 4; Dckt. 66. Creditor has not yet filed a proof of claim in this case. If Debtor was to cure this arrearage over 60 months of a plan, that would require \$238.53 in monthly cure payments. However, with the balloon payment due in October 2022, that would be approximately twenty-three (23) months, which would require cure payments of \$622.25.

The Note upon which Creditor bases its claim (Exhibit A, Dckt. 39) states that the regular monthly payments are \$694.58.

While there is an "arrearage payment," it does not provide for a cure of the arrearage during the plan term.

Lastly, Debtor argues that the June 2022 is unlikely to negatively affect the value of the property and Creditor remains protected because Creditor will receive a \$850.00 payment which addresses both the principal and the purported arrearage. *Id.* Regarding Creditor's concerns with Debtor's expenses, Debtor asserts that their expenses have increased due to their supporting two households (Debtor testifying that they are currently separated), a medical issue and the problem of two teenager doing distance learning. *Id.* *See also* Declaration, Dckt. 75. Debtor continues to make the insurance payment, which was never cancelled, by making this payment an automatic deduction from their bank account. *Id.*

Debtor testifies that the June 2022 sale date is so that his son can maintain the same residence through high school. Declaration, Dckt. 75, ¶ 5. In addition, Debtor testifies that it is difficult to locate an affordable rental place and that he would like to improve the property before selling so that he can recover the full amount of his investment. *Id.*

Decision

Debtor presents a Plan to pay the secured claim in approximately the first two years of the Plan. While making some arrearage payment, the arrearage would be cured only through the sale of the property more than two years after the case was filed.

Creditor appears to recognize that Debtor can be afforded a reasonable time to market and sell real property. While there are a number of family events by which Debtor would prefer to delay marketing and setting the Property, they are not a basis for further stretching the Bankruptcy Code.

At the hearing, **XXXXXXX**

~~Debtor having addressed Trustee's and Creditor's concerns, the Plan complies with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is confirmed.~~

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

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

~~The Motion to Confirm the Chapter 13 Plan filed by the debtor, Brad Alan Hamilton and Cherise Cathleen Williams ("Debtor"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the Motion is **XXXXXXX**, and Debtor's Chapter 13 Plan filed on October 18, 2020, as amended~~

~~Sale of the Property to take place in June 2022~~

~~is **XXXXXXX** confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

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 and Debtor's Attorney on November 10, 2020. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.
--

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

- A. Debtor failed to proof of social security number and identification at the Meeting of Creditors.
- B. Debtor has failed to file all tax returns required.
- C. Debtor failed to provide copy of the federal income tax return for the most recent tax year.

On November 18, 2020, Trustee filed a Status Report informing the court that Debtor appeared at the continue meeting of creditors held on November 12, 2020 and provided Trustee with identification and social security. Dckt. 32. Additionally, the meeting was continued to January 21, 2020 for the Debtor to file the tax returns required and provide Trustee with copies and proof that they have been filed. *Id.*

DISCUSSION

Failure to File Tax Returns

Debtor admitted at the Meeting of Creditors that the federal income tax return for the 2015, 2018, and 2019 tax year has not been filed still. Filing of the return is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

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, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (*pro se*) on November 18, 2020. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.
--

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

- A. Debtor failed to appear at the Meeting of Creditors.
- B. Debtor did not properly complete the plan form.
- C. Plan is not feasible.
- D. Debtor has not provided 521 documents.
- E. Debtor failed to provide business documents.
- F. Debtor's first plan payment will come due before the hearing.

DISCUSSION

Trustee's objections are well-taken.

Failure to Appear at 341 Meeting

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

Blank Plan

11 U.S.C. § 1325(a)(1) provides for confirmation of a plan if it complies with Chapter 13 provisions and other applicable Code provisions. Here, Debtor has proposed a plan that is woefully lacking in compliance with the Bankruptcy Code. Debtor left blank Sections 2.03, 3.06, 3.12, and 3.14. The Plan does not comply with 11 U.S.C. § 1325(a)(1).

Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). According to Debtor's Schedule I, Debtor is not employed and has no income. However, Schedule J states that debtor has a monthly income of \$2,496.00 with expenses of \$4,065 a month. Trustee is unclear if Debtor is able to propose a feasible plan. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

521 Documents: Pay Stubs & Tax

Debtor has not provided Trustee with employer payment advices for the sixty-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv); FED. R. BANKR. P. 4002(b)(2)(A). Also, Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A)(i); FED. R. BANKR. P. 4002(b)(3). Debtor has failed to provide all necessary pay stubs and has failed to provide the tax transcript. Those are independent grounds to deny confirmation. 11 U.S.C. § 1325(a)(1).

Failure to File Documents Related to Business

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

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

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

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

The court shall issue 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, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on November 17, 2020. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is XXXXXXX .
--

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that the Plan is not feasible.

DISCUSSION

Trustee's objections are well-taken.

Feasibility

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Trustee argues that Debtor history of dismissed cases for delinquency and is concerned that Debtor has under-reported her income and expenses.

Trustee then notes that Debtor's Schedule I lists InstaCart as an employer but no length is provided for this employment. Moreover, Debtor fails to explain or disclose any interest Debtor may have

on the Wells Fargo Overdraft Protection Savings account ending 2606 which receives “Recurring Transfers from Moore S Savings” that Debtor states are linked to a listed Wells Fargo account.

Lastly, Trustee asserts that a review of the Chase Bank statements indicates that the Debtor had significantly higher income than stated on Schedule I and that the Debtor’s Wells Fargo checking account statements indicate that the Debtor may have additional expenses that are not listed on Schedule J.

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

Debtor’s Response

On November 30, 2020, Debtor filed a Response and her Declaration addressing Trustee’s concerns. Dckts. 25, 26. Debtor testifies that her previous cases were dismissed after having encountered the death of her spouse and being affected by the recent loss and by the shutdown caused by the Covid-19 pandemic. Declaration, Dckt. 26, ¶ 5. Debtor further clarifies that she began working for InstaCart on October 2020 as stated in Schedule I. *Id.*, ¶ 6. Debtor then testifies that the Wells Fargo account was overlooked in that Debtor believed the checking and savings account were combined account and has now filed amended Schedules to disclose the savings account 2606. *Id.*, ¶ 7. *See also* Dckt. 24.

Debtor also explains that although her income had significantly increased since the shutdown was lifted in June 2020, the money was being spent at casinos after Debtor began gambling as she was depressed over the loss of her husband. *Id.*, ¶ 8. Finally, Debtor testifies that she has stopped gambling and is now working normal hours. *Id.*

~~Debtor having addressed Trustee’s concerns, the Plan complies with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained, and the Plan is confirmed.~~

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

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

~~The 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 Shirlean Sparkle Moore-Jordan’s (“Debtor”) Chapter 13 Plan filed on October 7, 2020, is confirmed. 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.~~

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, Chapter 13 Trustee, and Office of the United States Trustee on October 29, 2020. By the court's calculation, 40 days' notice was provided. 14 days' notice is required.

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

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

Caliber Home Loans, Inc. ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that the Plan fails to address Creditor's pre-petition arrearage.

DISCUSSION

Creditor's objection is well-taken.

Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts \$21,612.81 in pre-petition arrearage. The Plan does not propose to cure those arrearage. The Plan places Creditor's claim in Class 4, with the Debtor stating that there is no arrearage on this claim.

The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearage.

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 Caliber Home Loans, Inc. (“Creditor”) holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on November 17, 2020. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.
--

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

- A. The Plan lists Caliber Home Loans as being a claim that is not in default, but such is premised on a future loan modification.
- B. The information on Schedule H is inaccurate, with Debtor failing to disclose that his non-debtor spouse is a co-debtor on obligations.

DISCUSSION

Trustee's objections are well-taken.

Cannot Comply With the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). According to Trustee, Debtor admitted at the First meeting of Creditors that he is on a loan modification trial period. The plan only provides for the secured portion of Caliber Home Loan's claim and does not address the pre-petition arrearage.

The court has addressed Debtor's failure to cure Caliber Home Loan's pre-petition arrearage and has found it as independent grounds to not confirm the plan.

Additionally, according to Trustee, Debtor also admitted at the Meeting of Creditors that his non-filing spouse is a co-debtor on several debts. Debtor has failed to identify his non-filing spouse as a co-debtor on Schedule H for debts listed on Schedules D, and E/F. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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, 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.

FINAL RULINGS

35. [20-24518](#)-E-13
[DPC](#)-1

ROLANDO/IRENE WIJANGCO
Lars Fuller

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
11-10-20 [21]

Final Ruling: No appearance at the December 8, 2020 hearing is required.

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 and Debtor's Attorney on November 10, 2020. By the court's calculation, 28 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 is sustained, and the proposed Chapter 13 Plan is not confirmed.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Objection, Debtor filed an Amended Plan and corresponding Motion to Confirm on November 9, 2020. Dckts. 19, 16. Filing a new plan is a *de facto* withdrawal of the pending plan. 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 Confirmation 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 sustained, and the proposed Chapter 13 Plan is not confirmed.

Final Ruling: No appearance at the December 8, 2020 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, and Office of the United States Trustee on November 2, 2020. By the court’s calculation, 36 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtors, Adnan Mahmutovic and Maria Nicole Foley (“Debtor”), have filed evidence in support of confirmation.

The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Response indicating non-opposition on November 23, 2020. Dckt. 26. However, Trustee is unsure whether Debtor has filed all applicable tax returns based on the Proofs of Claim filed by the Internal Revenue Service and the Franchise Tax Board.

Debtor filed a Reply on November 30, 2020 stating that all applicable tax returns have been filed and attach as Exhibit B, the acknowledgment of receipt showing the filing and receipt of the returns for years 2016, 2017, 2018, and 2019. Dckts. 27, 29. Debtor also testify under penalty of perjury that the tax returns have been filed and authenticate Exhibit B. Declaration, Dckt. 28.

The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtors, Adnan Mahmutovic and Maria Nicole Foley (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor’s Modified Chapter 13 Plan filed on November 2, 2020, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

37. [19-23538](#)-E-13
[MC-1](#)
37 thru 38

ALFRED/LAURA VEGORS
Muoi Chea

**CONTINUED DEBTORS OBJECTION TO
NOTICE OF POST-PETITION
MORTGAGE FEES, EXPENSES, AND
CHARGES OF THE WOLF FIRM, A LAW
CORPORATION
10-5-20 [\[26\]](#)**

Final Ruling: No appearance at the December 8, 2020 hearing is required.

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 October 27, 2020. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

<p>The court having entered an Order (Dckt. 55) resolving this Contested Matter pursuant to the Stipulation of the Parties, the Matter is removed from the Calendar.</p>

38. [19-23538](#)-E-13
[MC-1](#)

ALFRED/LAURA VEGORS
Muoi Chea

CONTINUED DEBTORS OBJECTION TO
NOTICE OF POST-PETITION
MORTGAGE FEES, EXPENSES, AND
CHARGES OF THE WOLF FIRM, A LAW
CORPORATION
10-5-20 [[26](#)]

*** DUPLICATE**

39. [20-22375](#)-E-13
[JSO-7](#)

ANTHONY/THELMA BAUTISTA
Jeanne Serrano

MOTION TO CONFIRM PLAN
10-22-20 [[72](#)]

Final Ruling: No appearance at the December 8, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 22, 2020. By the court's calculation, 47 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 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 Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtors, Anthony Satoya Bautista and Thelma Tagle Bautista ("Debtor"), have provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on November 24, 2020. Dckt. 78. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

The Motion to Confirm the Chapter 13 Plan filed by the debtor, Anthony Satoya Bautista and Thelma Tagle Bautista ("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 Chapter 13 Plan filed on October 12, 2020, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the December 8, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 2, 2020. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

<p>The Motion for Allowance of Professional Fees is granted.</p>

Peter G. Macaluso, the Attorney ("Applicant") for Kimberly Jeanette Williams-Brito, the Chapter 13 Debtor ("Client"), makes a Request for the Additional Allowance of Fees and Expenses in this case.

Fees are requested for the period June 3, 2020, through September 15, 2020. Applicant requests fees in the amount of \$1,500.00.^{FN.1.}

FN.1. The court notes that the Motion states 6.85 hours at \$300.00 per hour with a total in the amount of \$1,998.75. According to the court's calculation, 6.85 hours at \$300.00 totals \$2,055.00.

Trustee does not oppose the motion and states that the fees appear reasonable. Dckt. 63.

APPLICABLE LAW

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or

(ii) services that were not—

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

(II) necessary to the administration of the case.

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

Reasonable Fees

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

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

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

Reasonable Billing Judgment

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

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

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

A review of the application shows that Applicant’s for the Estate include prosecution of a motion to Modify and preparing related Responses to Opposition and Status Report. The court finds the services were beneficial to Client and the Estate and were reasonable.

“No-Look” Fees

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

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

...

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

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

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

(3) If the fee under this Subpart is not sufficient to fully and fairly compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees. The fee permitted under this Subpart, however, is not a retainer that, once exhausted, automatically justifies a motion for additional fees. Generally, this fee will fairly compensate the debtor’s attorney for all preconfirmation services and most postconfirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims filed. Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation. Form EDC 3-095, Application and Declaration RE: Additional Fees and Expenses in Chapter 13 Cases, may be used when seeking additional fees. The necessity for a hearing on the application shall be governed by Fed. R. Bankr. P. 2002(a)(6).

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed \$4,000.00 in attorneys’ fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 16. Applicant prepared the order confirming the Plan.

Lodestar Analysis

If Applicant believes that there has been substantial and unanticipated legal services that have been provided, then such additional fees may be requested as provided in Local Bankruptcy Rule 2016-

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

In rare or exceptional instances, if the court determines that the lodestar figure is unreasonably low or high, it may adjust the figure upward or downward based on certain factors. *Miller v. Los Angeles Cty. Bd. of Educ.*, 827 F.2d 617, 620 n.4 (9th Cir. 1987). Therefore, the court has considerable discretion in determining the reasonableness of a professional’s fees. *Gates v. Duekmejian*, 987 F.2d 1392, 1398 (9th Cir. 1992). It is appropriate for the court to have this discretion “in view of the [court’s] superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters.” *Hensley*, 461 U.S. at 437. Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate. *See In re Placide*, 459 B.R. at 73 (citing *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Motion to Modify: Applicant spent 6.85 hours in this category. Applicant met with client to review Trustee’s Motion to Dismiss; prepared and filed the Motion to Modify in response to the Motion to Dismiss; filed Responses to Trustee’s Opposition and Status Report; prepared Debtor’s Declaration and Amended Schedules in support of plan modification; and appeared at the hearing on the Motion.

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Peter G. Macaluso	6.85	\$300.00	\$2,055.00
Total Fees for Period of Application			\$0.00

FEES ALLOWED

Fees

The unique facts surrounding the case, including prosecution of a Motion to Modify and preparing related Responses to Opposition and Status Report, raise substantial and unanticipated work for the benefit of the Estate, Debtor, and parties in interest. Applicant requests a reduced amount of fees in the amount of \$1,500.00. The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. The request for additional fees in the amount of \$1,500.00 is approved pursuant to 11 U.S.C. § 330 and authorized to be paid by David Cusick (“the Chapter 13 Trustee”) from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

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

Fees	\$1,500.00
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pursuant to this Application as final fees pursuant to 11 U.S.C. § 330 in this case.

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

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

The Motion for Allowance of Fees and Expenses filed by Peter G. Macaluso (“Applicant”), Attorney 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 G. Macaluso is allowed the following fees and expenses as a professional of the Estate:

Peter G. Macaluso, Professional Employed by Kimberly Jeanette Williams-Brito (“Debtor”)

Fees in the amount of \$1,500.00,

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

IT IS FURTHER ORDERED that David Cusick (“the Chapter 13 Trustee”) is authorized to pay the fees allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

Final Ruling: No appearance at the December 8, 2020 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, and Office of the United States Trustee on November 2, 2020. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

<p>The Motion to Incur Debt is granted.</p>
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Susan Marie Sultana ("Debtor") seeks permission to purchase a 2016 Hyundai Elantra SE 4D Sedan, VIN ending #1722, with a total purchase price of \$13,155.30 and monthly payments of \$268.54 to Westlake Financial over four (4) years with a 9.50% fixed interest rate.

The Trustee does not oppose the motion. Dckt. 64

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." FED. R. BANKR. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the Motion 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 Incur Debt filed by Susan Marie Sultana (“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 Susan Marie Sultana is authorized to incur debt pursuant to the terms of the agreement, Exhibit A, Dckt. 61.

42. 17-24379-E-13	MARCIS/MARTI BEUTLER	MOTION TO MODIFY PLAN
GEL-4	Gabriel Liberman	11-3-20 [106]

Final Ruling: No appearance at the December 8, 2020 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 November 3, 2020. By the court’s calculation, 35 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.
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The debtors, Marcis Allan Beutler and Marti Leeann Beutler (“Debtor”) seek confirmation of the Modified Plan to cure delinquency that resulted from their drastic decrease in income due to the Covid-19 pandemic. Declaration, Dckt. 108. The Modified Plan provides payments of \$1,375.00 commencing September 2020 through June 2022 (months 39 thru 60), and a 100 percent dividend to unsecured claims

totaling \$2,997.72. Modified Plan, Dckt. 110. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on November 20, 2020. Dckt. 112. Trustee opposes confirmation of the Plan on the basis that the Supplemental Schedules were filed only as exhibits.

DISCUSSION

On November 30, 2020 Debtor filed a Response apologizing for not stating that the Supplemental Schedules referred to in the Motion were those filed on October 7, 2020. Dckt. 115.

Debtor having addressed Trustee's concerns, the Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtors, Marcis Allan Beutler and Marti Leeann Beutler ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on November 3, 2020, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.