

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

December 17, 2019 at 2:00 p.m.

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1. [19-25517](#)-C-13 FRANK/KATHLEEN RANDELL CONTINUED OBJECTION TO
[DPC](#)-2 Mark Briden CONFIRMATION OF PLAN BY DAVID
P CUSICK
10-17-19 [[20](#)]

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the 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 October 17, 2019. 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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The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that:

- A. the Debtor did not appear at the Meeting of Creditors on October 10, 2019. The Meeting was continued to

December 12, 2019.

B. Debtor is delinquent \$100 in plan payments.

NOVEMBER 5, 2019 HEARING

At the November 5, 2019 hearing, the court was informed that Debtor's counsel was hospitalized. The court granted a continuance to allow Debtor and Debtor's counsel the opportunity to appear at the hearing and argue the Objection on the merits.

DISCUSSION

The Chapter 13 Trustee asserts that Debtor is \$100 delinquent in plan payments, which represents one month \$100 plan payment. Before the hearing, another plan payment will be due. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6).

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 the Chapter 13 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 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.

THRU #6

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

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 3007-1 Objection to Claim-Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor , and Debtor's Attorney on November 12, 2019. By the court's calculation, 35 days' notice was provided. 30 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b) (2) .

The Objection to Claim was properly set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b) (2) . Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----.

**The Objection to Proof of Claim Number 11-2 of US
Department of Education/Nelnet is sustained, and the
claim is disallowed in its entirety.**

The Chapter 13 Trustee, David Cusick ("Objector") requests that the court disallow the claim of US Department of Education/Nelnet ("Creditor"), Proof of Claim No. 11-2 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$0.00.

Objector argues that the documentation is insufficient to evidence what is owed, if anything. Objector notes that the claim was originally filed in January 2015, Objector made payments, and those payments were returned. The claim was later filed as 11-2, asserting a claim for \$0.00.

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial evidence to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *In re Austin*, 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

Here, Objector presented evidence that the Creditor returned funds because Debtor's social security number and account are not in Creditor's system. Debtor not being in Creditor's system is evidence showing Creditor has no claim-and no evidence to the contrary has been filed.

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

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

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

The Objection to Claim of US Department of Education/Nelnet ("Creditor"), filed in this case by the Chapter 13 Trustee, David Cusick ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 11-2 of Creditor is sustained, and the claim is disallowed in its entirety.

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 3007-1 Objection to Claim-Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor, and Debtor's Attorney on November 12, 2019. By the court's calculation, 35 days' notice was provided. 30 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(2).

The Objection to Claim was properly set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----.

**The Objection to Proof of Claim Number 12-2 of US
Department of Education/Nelnet is sustained, and the
claim is disallowed in its entirety.**

The Chapter 13 Trustee, David Cusick ("Objector") requests that the court disallow the claim of US Department of Education/Nelnet ("Creditor"), Proof of Claim No. 11-2 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$0.00.

Objector argues that the documentation is insufficient to evidence what is owed, if anything. Objector notes that the claim was originally filed in January 2015, Objector made payments, and those payments were (mostly) returned. The claim was later filed as 12-2, asserting a claim for \$0.00.

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial evidence to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *In re Austin*, 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

Here, Objector presented evidence that the Creditor returned funds because Debtor's social security number and account are not in Creditor's system. Debtor not being in Creditor's system is evidence showing Creditor has no claim-and no evidence to the contrary has been filed.

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

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

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

The Objection to Claim of US Department of Education/Nelnet ("Creditor"), filed in this case by the Chapter 13 Trustee, David Cusick ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 12-2 of Creditor is sustained, and the claim is disallowed in its entirety.

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 3007-1 Objection to Claim-Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor, and Debtor's Attorney on November 12, 2019. By the court's calculation, 35 days' notice was provided. 30 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b) (2).

The Objection to Claim was properly set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b) (2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----.

**The Objection to Proof of Claim Number 13-2 of US
Department of Education/Nelnet is sustained, and the
claim is disallowed in its entirety.**

The Chapter 13 Trustee, David Cusick ("Objector") requests that the court disallow the claim of US Department of Education/Nelnet ("Creditor"), Proof of Claim No. 13-2 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$0.00.

Objector argues that the documentation is insufficient to evidence what is owed, if anything. Objector notes that the claim was originally filed in January 2015, Objector made payments, and those payments were (mostly) returned. The claim was later filed as 13-2, asserting a claim for \$0.00.

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial evidence to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *In re Austin*, 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

Here, Objector presented evidence that the Creditor returned funds because Debtor's social security number and account are not in Creditor's system. Debtor not being in Creditor's system is evidence showing Creditor has no claim-and no evidence to the contrary has been filed.

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

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

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

The Objection to Claim of US Department of Education/Nelnet ("Creditor"), filed in this case by the Chapter 13 Trustee, David Cusick ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 13-2 of Creditor is sustained, and the claim is disallowed in its entirety.

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 3007-1 Objection to Claim-Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor, and Debtor's Attorney on November 13, 2019. By the court's calculation, 34 days' notice was provided. 30 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(2).

The Objection to Claim was properly set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----.

The Objection to Proof of Claim Number 9-1 of US Department of Education/SLM is sustained, and the claim is disallowed in its entirety.

The Chapter 13 Trustee, David Cusick ("Objector") requests that the court disallow the claim of US Department of Education/SLM ("Creditor"), Proof of Claim No. 9-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$8,740.00.

Objector argues that the documentation is insufficient to evidence what is owed, if anything. Objector notes that payments were made, but later returned because Debtor's social security number and account are not in Creditor's system.

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial evidence to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *In re Austin*, 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

Here, Objector presented evidence that the Creditor returned funds because Debtor's social security number and account are not in Creditor's system. Debtor not being in Creditor's system is evidence showing Creditor has no claim-and no evidence to the contrary has been filed.

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

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

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

The Objection to Claim of US Department of Education/SLM ("Creditor"), filed in this case by the Chapter 13 Trustee, David Cusick ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 9-1 of Creditor is sustained, and the claim is disallowed in its entirety.

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 3007-1 Objection to Claim-Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor, and Debtor's Attorney on November 13, 2019. By the court's calculation, 34 days' notice was provided. 30 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b) (2).

The Objection to Claim was properly set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b) (2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----.

**The Objection to Proof of Claim Number 10-1 of US
Department of Education/SLM is sustained, and the claim is
disallowed in its entirety.**

The Chapter 13 Trustee, David Cusick ("Objector") requests that the court disallow the claim of US Department of Education/SLM ("Creditor"), Proof of Claim No. 10-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$6,810.00.

Objector argues that the documentation is insufficient to evidence what is owed, if anything. Objector notes that payments were made, but later returned because Debtor's social security number and account are not in Creditor's system.

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial evidence to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *In re Austin*, 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

Here, Objector presented evidence that the Creditor returned funds because Debtor's social security number and account are not in Creditor's system. Debtor not being in Creditor's system is evidence showing Creditor has no claim-and no evidence to the contrary has been filed.

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

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

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

The Objection to Claim of US Department of Education/SLM ("Creditor"), filed in this case by the Chapter 13 Trustee, David Cusick ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 10-1 of Creditor is sustained, and the claim is disallowed in its entirety.

THRU #8

No Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

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 7, 2019. By the court's calculation, 29 days' notice was provided. 35 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Incur Debt is XXXXXX
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Gary D. Duerner ("Debtor") seeks permission to incur debt in an amount of \$154,000.00 in order to make a balloon payment coming due on his mortgage, and to make two missed plan payments.

NOVEMBER 5, 2019 HEARING

At the November hearing, the court addressed with the Debtor that no financing agreement was actually filed with the Motion for the court to approve. The court continued the hearing to allow Debtor to correct the deficiency with supplemental filings. Civil Minutes, Dckt. 255.

SUPPLEMENTAL FILING

On December 16, 2019, Debtor filed a document entitled Financing Agreement To Refinance Property, which includes a copy of a Mortgage Loan Disclosure Statement. Dckt. 228.

The Statement indicates a potential loan from FMC Lending in the amount of \$235,000.00, with 10.99% interest over 40 years.

DISCUSSION

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).

Here, the Debtor is seeking prospective relief, and has not actually procured financing. As stated, *supra*, a motion to incur debt must be accompanied by a copy of the agreement, and a summary of all the material provisions. The court cannot authorize financing without knowing any of the terms.

At the hearing, **XXXXXXXXXXXXXXXXXX**.

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 Gary D. Duerner ("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 **XXXXXX**

No Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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) (1) Motion-Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (pro se) and Office of the United States Trustee on October 22, 2019. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (1). Debtor filed opposition.

The Motion to Dismiss is XXXXXX

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

1. The debtor, Gary D. Duerner ("Debtor"), is in month 59 of the Confirmed Plan, but is delinquent \$4,000.00.
2. The Debtor filed a Motion To Incur Debt set for November 5, 2019, which Trustee has opposed.
3. The Confirmed Plan requires a balloon payment of \$229,000 less adequate protection payments made through the plan.

DEBTOR'S RESPONSE

Debtor filed a Response on November 5, 2019. Dckt. 222. Debtor states he fell delinquent in plan payments because his income from solar sales have taken longer than expected, but that the delinquency will be cured after his Motion To Incur Debt is approved.

DISCUSSION

The court continued the Motion at the prior hearing in light of Debtor seeking post-petition financing. However, a review of the docket shows debtor has not filed a copy of the postpetition financing agreement despite the court affording additional time to do so.

At the hearing, **XXXXXXXXXXXXXXXXXX**.

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 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 hearing on the Motion to Dismiss is **XXXXXX**

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*) November 26, 2019. 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.
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The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on several grounds, including that:

- A. Debtor has \$2.9 million in secured and over \$1 million in unsecured debt, making Debtor ineligible for Chapter 13 relief.
- B. Debtor is \$300 delinquent in plan payments.
- C. Debtor lists net monthly income of (\$410).
- D. Debtor has not provided a copy of Debtor's recent tax returns.
- E. Secured claim treatment is irregular, with some claims listed having an arrearage with no arrearage

payment, and some with only an arrearage.

- F. Debtor proposes the sale of real property to pay for certain arrearage claims, but provides no specific information.

Based on the above, the court finds that Debtor's plan is not feasible. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

Based on Debtor's schedules, it also appears he is well outside the debt limits for being a Chapter 13 debtor. 11 U.S.C. § 109.

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

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.

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 November 11, 2019. 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 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 denied.

The debtor, Eufemio Ordonia Seguban and Liza Frani Seguban ("Debtor") seek confirmation of the Modified Plan to address unanticipated expenses from emergency dental work. Declaration, Dckt. 61. The Modified Plan provides for \$4,220 paid through October 25, 2019, and payments of \$845 for the remainder of the plan term. Modified Plan, Dckt. 60. 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 December 9, 2019. Dckt. 70. Trustee argues Debtor is \$845 delinquent under the plan.

DEBTOR'S REPLY

Debtor's counsel filed an opposition on December 9, 2019, asserting that the delinquency was cured. Dckt. 73. However, there is no supporting declaration.

DISCUSSION

The Chapter 13 Trustee asserts that Debtor is \$845 delinquent in plan payments, which represents one month of the plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6).

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, Eufemio Ordonia Seguban and Liza Frani Seguban ("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.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on November 26, 2019. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00).

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

The Motion for Allowance of Professional Fees is granted.
--

Pauldeep Bains, the Attorney ("Applicant") for John A D'Antonio and Olivia M D'Antonio, 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 September 15, 2016, through November 26, 2019. Applicant requests fees in the amount of \$6,900.

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 Brunswick 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 opposing 8 dismissal motions and confirming a modified plan. 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 debtor's (prior) counsel 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. 101. 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.

Case Administration: Applicant spent 3.7 hours reviewing documents and communicating with Debtor.

Motions to Dismiss: Applicant spent 18.3 hours in this category. Applicant opposed on Debtor's behalf 8 motions seeking dismissal of the case.

Motion to Modify: Applicant spent 7.5 hours developing and ultimately confirming a modified Chapter 13 Plan.

Compensation: Applicant spent 4 hours preparing this application.

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
Pauldeep Bains	32.5	\$300.00	\$9,750.00
Total Fees for Period of Application			\$9,750.00
Total Fees Requested			\$6,900.00

FEES ALLOWED

Fees

The unique facts surrounding the case, including opposing 8 dismissal motions and confirming a modified plan, raise substantial and unanticipated work for the benefit of the Estate, Debtor, and parties in interest. 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 \$6,900 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.

The court authorizes the Chapter 13 Trustee under the confirmed plan to pay the fees allowed by the court.

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

Fees	\$6,900
------	---------

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 Pauldeep Bains ("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 Pauldeep Bains is allowed the following fees and expenses as a professional of the Estate:

Pauldeep Bains, Professional Employed by John A D'Antonio and Olivia M D'Antonio ("Debtor")

Fees in the amount of \$6,900,

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.

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, and the US Trustee on October 30, 2019. 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).

The Motion to Confirm the Plan is denied.
--

The debtor, Brian Floyd Murphy ("Debtor") seeks confirmation of the Chapter 13 Plan. The Plan provides for payments of \$1,900 for 60 months, and a 100 percent dividend to unsecured claims totaling \$4,193. Plan, Dckt. 15. 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 December 2, 2019. Dckt. 23. Trustee argues Debtor is \$2,034.14 delinquent in plan payments.

DISCUSSION

The Chapter 13 Trustee asserts that Debtor is \$2,034.14 delinquent in plan payments, which represents multiple months of the \$1,900 plan payment. Before the hearing, another plan payment will be due. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation.

See 11 U.S.C. § 1325(a)(6).

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 debtor, Brian Floyd Murphy ("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.

No Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on September 25, 2019. By the court's calculation, 41 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.
--

The debtor, Michael Phillip Tharp and Carrie Kay Tharp ("Debtor") seek confirmation of the Modified Plan to provide for JP Morgan Chase Bank, N.A.'s claim as a Class 3 due to the collateral being in a collision. Declaration, Dckt. 87. The Modified Plan provides 19,025.50 paid through September 22, 2019, and payments of \$777 per month starting September 25, 2019. Modified Plan, Dckt. 89. 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 21, 2019. Trustee argues that payments of \$6,439.14 already made to secured creditor JP Morgan Chase Bank, N.A. are not authorized by this plan.

NOVEMBER HEARING

At the November 5, 2019, hearing the court continued the hearing to allow further assessment of what has been paid, what is authorized, and whether the plan is feasible.

DISCUSSION

Trustee argues that payments of \$6,439.14 already made to secured creditor JP Morgan Chase Bank, N.A. are not authorized by this plan.

At the hearing, ~~xxxxxxxxxxxxxxxx~~.

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 Phillip Tharp and Carrie Kay Tharp ("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 25, 2019, 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.

No Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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 18, 2019. By the court's calculation, 34 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 XXXXXX.
--

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

- A. Debtor proposes plan payments of \$2,987 where Schedules I and J show net disposable monthly income of \$3,153.54.
- B. Debtor has not provided for the secured claim of 4JK.
- C. Debtor's plan may unfairly discriminate against unsecured claims where the secured claim of 4JK, based on a judgement lien, is avoidable.

DEBTOR'S REPLY

Debtor filed a Response indicating that a lien avoidance motion is pending the same day as this hearing, and that the remaining objections will be addressed in the order confirming the plan.

DISCUSSION

A review of the docket shows that Debtor's avoidance motion was granted on December 10, 2019. Dckts. 47, 48.

At the hearing, the parties address whether the remaining grounds for opposition are addressable in the order confirming plan ~~xxxxxxxxxxxxxxxxxx~~.

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 ~~xxxxxxx~~

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 November 26, 2019. 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. Debtor has not provided 6 months of profit and loss statements for each of Debtor's businesses.
- B. Debtor lists two businesses and \$5,000 per month in business income, but has not filed the required statement for property or business income.

DISCUSSION

The Debtor is required by the Bankruptcy Code to cooperate with the Trustee, providing all necessary documents to allow Trustee to do his duties. 11 U.S.C. § 521(3). Because Debtor has not provided all documents requested by the Trustee, Debtor has not met this duty. Additionally, without proving Debtor's business income, the Plan has not been shown to be feasible.

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.

THRU #19

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

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 November 4, 2019. 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 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 debtor, Michael Frank Borkowski ("Debtor") seeks confirmation of the Chapter 13 Plan. The Plan is lump sum based, proposing to pay all claims by selling or refinancing Debtor's property by June 30, 2020. Plan, Dckt. 51. 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 December 2, 2019. Dckt. 62. Trustee opposes confirmation on the following grounds:

1. Debtor has not amended Schedule I to reflect current income.
2. Debtor has classified the secured claim of Stewart Title as a Class 2(B), but that creditor contends its claim is fully secured.
3. Debtor is delinquent \$978 in plan payments.

4. Debtor's plan relies on valuing the secured claim of Stewart Title. However, no motion to value that claim has been filed.
5. Trustee is objecting to the use of a flat fee in this case. Debtor's original counsel Peter Cianchetta opted in to a no look fee with \$2,155 paid in advance. Additionally, no Attorney Disclosure of Compensation has been filed.
6. The plan does not specify a term.
7. The Debtor's declaration provides insufficient evidence to show the plan meets the requirements of 11 U.S.C. § 1325.

CREDITOR STEWART TITLE'S OBJECTION

After Debtor filed this Motion, Creditor Stewart Title Gauranty Company ("Stewart Title") filed an Objection. Dckt. 53.

Steward Title argues that its claim was scheduled as unsecured, where it is secured by a recorded abstract of judgment, and where Debtor has not valued its claim. Stewart Title argues further that the misclassification of its claim shows the Plan was not proposed in good faith.

DISCUSSION

There are numerous grounds for opposition raised by the opposing parties. However, none of them seem to go the heart of the current plan.

Trustee argues Debtor has no shown an ability to pay, or otherwise shown the plan to be feasible because of its terms. Stewart Title argues only that the plan was proposed in bad faith because it was listed as an unsecured creditor in Debtor's schedules.

The Plan here provides for an unspecified lump sum payoff of all claims. Dckt. 51. Thus, it is not surprising there is no stated plan term and the Debtor's schedules do not exactly show an ability to pay through monthly income.

But, the bigger concern here is that the sale/refinance has not been shown to be feasible. There is no description of a sale period, of whether a broker has been hired, of how much the sale will realize, or what the lump sum payment will be. There is no explanation of why Debtor needs over six months to sell or refinance when that case has been pending nearly a year already.

Debtor has not met his burden to show the plan is feasible. 11 U.S.C. § 1325(a) (6).

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 debtor, Michael Frank Borkowski ("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.

17. [19-20087](#)-C-13 MICHAEL BORKOWSKI
[CSR-2](#) Eric Schwab

OBJECTION TO CONFIRMATION OF
PLAN BY STEWART TITLE GUARANTY
COMPANY
11-22-19 [[53](#)]

The Objection to Confirmation of Plan filed by Stewart Title Company shall be heard in conjunction with the Motion To Confirm (Dckt. 48) filed by the Debtor.

No Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 19, 2019. By the court's calculation, 71 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 xxxxxx
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The debtor, Svetlana Tkachuk ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for payments of \$0.00 for 2 months, \$2,020.00 for 58 months, and a 0 percent dividend on claims totaling \$117,928.60. Amended Plan, Dckt. 44. 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 September 16, 2019. Dckt. 55. The Trustee opposes confirmation on the basis that the "Ensminger Provision" includes terms not traditionally approved by the court. Trustee includes the standard "Ensminger Provision" language his Opposition, but does not identify what terms he believes are atypical or problematic.

CONTINUED HEARING

The hearing was continued from October 29, 2019, to allow Debtor and creditor Bank of New York Mellon ("Creditor") discuss the adequate protection payment. Civil Minutes, Dckt. 59.

CREDITOR'S OPPOSITION

Creditor filed an Opposition on November 26, 2019. Dckt. 63. Creditor opposes confirmation on the grounds:

1. The plan understates arrearages to be \$451,222.45, where they are actually \$474,661.90.
2. Debtor has insufficient disposable income to make the increased payment necessary to cure the actual arrearages.
3. Debtor filed this case in bad faith, as indicated by the prior filed and dismissed cases.
4. The original borrower Yaroslav Tkachuk transferred an interest in the property to Debtor without authorization in 2005 for the purpose of preventing or delaying Creditor's recovery. .
5. While there was a loan modification offered to Debtors, they did not make the trial payments, and therefore there is no pending loan modification.

DISCUSSION

The court continued the prior hearing because the adequate protection payment on Creditor's claim pending loan modification did not seem adequate. However, now Creditor has made assertions that challenge the feasibility of the plan, including that there is no pending loan modification, and that the Debtor is unable to make payments given the understating of arrearages owed.

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 Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Svetlana Tkachuk ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

THRU #22

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on November 12, 2019. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of California Employment Development Department ("Creditor") is denied without prejudice.

The Motion to Value filed by Christopher G. McIntos ("Debtor") to value the secured claim of the California Employment Development Department ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 27. Debtor is the owner of the subject real property commonly known as 1824 Jamestown Drive Sacramento, California ("Property"). Debtor seeks to value the Property at a fair market value of \$310,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. See FED. R. EVID. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response noting the Motion includes a copy of the recorded abstract, which was missing at a hearing on the prior motion seeking to value the same claim. Dckt. 46.

SUPPLEMENTAL PLEADING VALUING PERSONAL PROPERTY

The Debtor's Counsel, at the advice of the court (Civil Minutes, Dckt. 48), filed a supplemental document on December 13, 2019, seeking to establish the value of Debtor's personal property, which also secures Creditor's claim. Dckt. 50.

The Debtor's counsel argues the personal property value is \$2,828 after excepting a \$1,000 secured claim on Debtor's vehicle and excluding the non-filing spouse's separate property.

RULING

Despite the supplemental document filed, the court still has insufficient evidence to make a ruling on the Motion.

This is because Debtor's counsel makes unknown deductions the non-filing spouse's "separate property," and there is no evidence that this property is actually separate. The personal property removed from the calculation includes a (1) 2003 BMW 525i valued at \$600; (2) 2015 Nissan Altima valued at \$10,000; and (3) a 401K paycheck valued at \$26,100.

If the various property were separate, it is unclear why it is listed on Debtor's schedules, since that property would not be property of the Estate.

California Law provides that separate property includes:

- (1) All property owned by the person before marriage.
- (2) All property acquired by the person after marriage by gift, bequest, devise, or descent.
- (3) The rents, issues, and profits of the property described in this section.

Cal. Fam. Code § 770.

Some of the explanations included in Debtor's schedules are that the Nissan "NOT in Debtor's name" and "is wife's car . . . mostly NOT community property . . ." Without more, it is unclear here how this property can be "mostly" separate.

As to taking title in the wife's name alone, if the purchase was made with community funds, then to be the non-filing spouse's separate property there had to be an express declaration made, joined in, consented to, or accepted by the Debtor. Cal. Fam. Code § 852; *In re Marriage of Valli*, 58 Cal. 4th 1396, 1400, 324 P.3d 274, 276 (2014).

Even assuming the property was separate, the court is not persuaded

that the community did not later get an interest in the property. See *In re Marriage of Moore*, 28 Cal. 3d 366, 371-72, 618 P.2d 208, 210 (1980).

Additionally, no declaration is provided by the Debtor presenting evidence as to his opinion of value of personal property.

Fore the foregoing reasons, the court will deny the Motion 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 Value Collateral and Secured Claim filed by Christopher G. McIntos ("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 denied without prejudice.

No Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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 20, 2019. 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.

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 Debtor failed to list the Employment Development Department of California's ("EDD") claim as a secured Class 2 claim to be valued by the value of the collateral.
- B. The Plan relies on valuing EDD's claim.

DISCUSSION

A review of the docket shows the court denied without prejudice the Debtor's Motion To Value (Dckt. 39) on the grounds insufficient evidence of value of the personal property was given.

Therefore, the court will sustain this Objection because the Plan is not currently feasible. 11 U.S.C. § 1325(a) (6).

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

The court shall issue 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 Plan is not confirmed.

FINAL RULINGS

21. [19-24922-C-13](#) MIGUEL/EMILIA ZULOAGA MOTION TO MODIFY PLAN
[TLA-1](#) Thomas Amberg 11-12-19 [[18](#)]

Final Ruling: No appearance at the December 17, 2019, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on November 12, 2019. 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.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Miguel Anjel Zuloaga and Emilia Ane Zuloaga ("Debtor"), have filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response indicating non-opposition on December 3, 2019. Dckt. 24 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, Miguel Anjel Zuloaga and Emilia Ane Zuloaga ("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 12, 2019, 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

22. [19-25053](#)-C-13 EMILIA CAOAGAS AND
[FF-2](#) RODRIGO DONES
Gary Fraley

MOTION TO VALUE COLLATERAL OF
ONE MAIN FINANCIAL
11-15-19 [[30](#)]

Final Ruling: No appearance at the December 17, 2019, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on November 15, 2019. By the court's calculation, 32 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 One Main Financial ("Creditor") is, and Creditor's secured claim is determined to have a value of \$4,175.00.

The Motion filed by Emilia Labaoig Caoagas and Rodrigo Rivera Dones ("Debtor") to value the secured claim of One Main Financial ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 33. Debtor is the owner of a 2010 Nissan Versa ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$4,175.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on July 10, 2010, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$6851.45. Proof of Claim, No. 5. 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 \$4,175.00, 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 Emilia Labaoig Caoagas and Rodrigo Rivera Dones ("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 One Main Financial ("Creditor") secured by an asset described as 2010 Nissan Versa ("Vehicle") is determined to be a secured claim in the amount of \$4,175.00, 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 \$4,175.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

THRU #24

Final Ruling: No appearance at the December 17, 2019, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on November 16, 2019. By the court's calculation, 31 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 Capital One Auto Finance, a division of Capital One, N.A. ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$6,628.00 .

The Motion filed by Yolanda Padua Canaya ("Debtor") to value the secured claim of Capital One Auto Finance, a division of Capital One, N.A. ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 23. Debtor is the owner of a 2009 Acura Integra MDX ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$6,628.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. See FED. R. EVID. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The Creditor filed a Response on December 3, 2019, consenting to the value asserted by Debtor. Dckt. 27.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on May 9, 2015, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$14,523.11 . Proof of Claim, No. 4. 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 \$6,628.00, 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 Yolanda Padua Canaya ("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 Capital One Auto Finance, a division of Capital One, N.A. ("Creditor") secured by an asset described as 2009 Acura Integra MDX ("Vehicle") is determined to be a secured claim in the amount of \$6,628.00, 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 \$6,628.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

Final Ruling: No appearance at the December 10, 2019, hearing is required.

Local Rule 9014-1(f)(2) Objection-Hearing Not Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's attorney November 13, 2019. 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.

Upon review of the record, a hearing is not necessary.

The Objection to Confirmation of Plan is overruled.
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The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that the Plan relies on valuing the secured claim of Capital One Auto finance.

DISCUSSION

A review of the docket shows Debtor's Motion To Value (Dckt. 20) was granted.

The Plan does comply 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 Yolanda Padua Canaya's ("Debtor") Chapter 13 Plan filed on September 25, 2019, 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.

Final Ruling: No appearance at the December 17, 2019, hearing is required.

Local Rule 3007-1 Objection to Claim-No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Chapter 13 Trustee, and Office of the United States Trustee on October 29, 2019. By the court's calculation, 49 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b) (1) (requiring fourteen days' notice for written opposition).

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

The Objection to Proof of Claim Number 3 of Merrick Bank is sustained, and the claim is disallowed in its entirety.

The debtor, Jami Lynn Kear ("Objector") requests that the court disallow the claim of Merrick Bank ("Creditor"), Proof of Claim No. 3 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$2,303.35. Objector asserts that the Statute of Limitations on the collection of contract claims in California is four years from the date the balance was due under the contract or four years from the date the last payment was made under the contract. Objector states that according to the Proof of Claim, the charge off date was September 30, 2015. The date of last payment on the Statement of Account Information attached to the Proof of Claim states March 19, 2015.

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim

is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

California Code of Civil Procedure § 337 states in relevant part:

2. An action to recover (1) upon a book account whether consisting of one or more entries; (2) upon an account stated based upon an account in writing, but the acknowledgment of the account stated need not be in writing; (3) a balance due upon a mutual, open and current account, the items of which are in writing; provided, however, that where an account stated is based upon an account of one item, the time shall begin to run from the date of said item, and where an account stated is based upon an account of more than one item, the time shall begin to run from the date of the last item.

The Bankruptcy Code provides certain extensions of time for actions a creditor may take when a debtor files for bankruptcy. Specifically, 11 U.S.C. § 108(c) provides:

Except as provided in section 524 of this title, if **applicable nonbankruptcy law**, an order entered in a nonbankruptcy proceeding, or an agreement **fixes a period for commencing or continuing a civil action** in a court other than a bankruptcy court **on a claim against the debtor**, or against an individual with respect to which such individual is protected under section 1201 or 1301 of this title, and such period has not expired before the date of the filing of the petition, then **such period does not expire until the later of--**

(1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or

(2) **30 days after notice of the termination or expiration of the stay under section 362, 922, 1201, or 1301 of this title, as the case may be, with respect to such claim.**

A review of Proof of Claim No. 3 lists the charge off date as September 30, 2015. The court takes judicial notice that a creditor does not "charge off" an account if payments are being made or further credit is being extended. (This basic fundamental point of credit transactions is commonly known by both creditors and consumers alike.)

No payment or other transaction occurred after March 19, 2015. Thus, the four-year statute of limitations expired on March 19, 2019.

December 17, 2019 at 2:00 p.m.

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This bankruptcy case was filed on August 19, 2019—roughly 5 months after the statute of limitations expired. There was no period of time for 11 U.S.C. § 108 to preserve and extend for Creditor.

Based on the evidence before the court, the creditor's claim is disallowed in its entirety due to the statute of limitations expiring prior to the filing of the case. The Objection to the Proof of Claim is sustained.

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

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

The Objection to Claim of Merrick Bank ("Creditor") filed in this case by debtor, Jami Lynn Kear ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 3 of Merrick Bank is sustained, and the claim is disallowed in its entirety.

Attorney's fees and costs, if any, shall be requested as provided by Federal Rule of Civil Procedure 54 and Federal Rules of Bankruptcy Procedure 7054 and 9014.

Final Ruling: No appearance at the December 17, 2019, hearing is required.

Local Rule 9014-1(f)(1) Motion-Hearing Not Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on November 14, 2019. By the court's calculation, 33 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).

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

Susan Turner, the Attorney ("Applicant") for Amanda Gracie Andrews and Christopher Maurice Aragon, Sr., the Chapter 13 Debtor ("Client"), makes a Second and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period May 29, 2018, through October 11, 2019. Applicant requests fees in the amount of \$4,348.65.

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, opposition to dismissal motions, preparation of an amended plan, and claim review. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

Applicant provides the following summary of tasks performed (a full itemized billing statement was filed as Exhibit B (Dckt. 129)):

Review, preparation and response to two motions to dismiss, preparation of the amended plan, communicating with Debtors, the Trustee and creditors, obtaining confirmation of the plan and reviewing claims.

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
Susan Turner	15.1	\$300.00	\$4,530.00
Total Fees Requested Period of Application			\$4,348.65

Pursuant to prior Interim Fee Applications the court has approved pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330, the court previously awarded \$6,026.60 in fees. Dckts. 84, 85.

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. Second Interim and Final Fees in the amount of \$4,348.65 and prior Interim Fees in the amount of \$6,026.60 are approved pursuant to 11 U.S.C. § 330 / are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 from the available Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case.

The court authorizes the Chapter 13 Trustee to pay the fees and costs allowed by the court.

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

case:

Fees \$4,348.65

pursuant to this Application and prior interim fees and interim costs of \$6,026.60 final fees pursuant to 11 U.S.C. § 330 / as final fees and costs pursuant to 11 U.S.C. § 330 in this case.

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

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

The Motion for Allowance of Fees and Expenses filed by Susan J. Turner ("Applicant"), Attorney for Amanda Gracie Andrews and Christopher Maurice Aragon, Sr., the Chapter 13 Debtor ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Susan J. Turner is allowed the following fees and expenses as a professional of the Estate:

Susan J. Turner, Professional employed by the Chapter 13 Debtor

Fees in the amount of \$4,348.65

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

The fees and costs pursuant to this Motion, and fees of \$6,026.60 approved pursuant to prior Interim Application, are approved as final fees and costs pursuant to 11 U.S.C. § 330.

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

27. [19-26416](#)-C-13 ANGELA RUSFELDT
[DPC-1](#) W. Steven Shumway

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P CUSICK
11-25-19 [[29](#)]

THRU #

Final Ruling: No appearance at the December 17, 2019, hearing is required.

Local Rule 9014-1(f)(2) Objection-Hearing Not 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 25, 2019. By the court's calculation, 22 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.

Upon review of the record, a hearing is not required.

<p>The hearing on the Objection to Confirmation of Plan is continued to January 14, 2019 at 2:00p.m.</p>

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

- A. Debtor did not appear at the Meeting of creditors on November 21, 2019. The Meeting was continued to January 16, 2019.
- B. Trustee doubts the plan feasibility where Debtor provided very limited information about her and her non-filing spouses' occupations, where Debtor reports no income for the last two years on her Statement of Financial Affairs, and where this is a case filed in a long series of unsuccessful cases.

DEBTOR'S RESPONSE

Debtor filed a Response on December 10, 2019, arguing that the 341 Meeting was missed due to calendaring error, and that the plan is feasible. As to feasibility, Debtor asserts documentation was submitted to the Trustee to demonstrate an ability to pay. Debtor also argues that Debtor's non-filing spouse's most recent case was dismissed because Debtor was too far delinquent by the time Debtor had sufficient income to fund the plan.

DISCUSSION

In light of the Debtor submitting supplemental documentation, and the Objection in part opposing confirmation because the Debtor failed to appear at the 341 Meeting, the court shall continue the hearing to allow Debtor to appear at the continued hearing while the parties continue to assess whether the case is feasible.

The hearing is continued to January 14, 2019 at 2:00p.m.

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 hearing on the Objection to Confirmation of the Plan is continued to January 14, 2019 at 2:00p.m.

Final Ruling: No appearance at the December 17, 2019, hearing is required.

Local Rule 9014-1(f)(2) Objection-Hearing Not 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 December 2, 2019. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

Upon review of the record, a hearing is not required.

**The hearing on the Objection to Confirmation of the Plan
is continued to January 14, 2019 at 2:00p.m.**

CERTIS PN 1, LLC ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

- A. The proposed Plan does not set forth a reasonable schedule and time period for the payment of the arrearages owed Creditor given multiple prior filings and prepetition delinquencies.
- B. Given Debtor's prior history and speculative future income, there is not a reasonable likelihood of success in this bankruptcy. As pointed out in the trustee's objection to the currently proposed plan, feasibility is a concern as the schedules do not adequately provide sufficient information regarding the Debtor and her non-filing spouse's employment.

DISCUSSION

Creditor opposes confirmation largely on the existence of past unsuccessful cases, and prepetition delinquencies. Though some evidence, neither are per se indicative of the present plan's feasibility.

Creditor also relies on Trustee's arguments (Dckt. 29) about insufficient information provided as to Debtor and her non-filing spouse's employment. In response to Trustee's Objection, Debtor argues additional documentation was submitted to the Trustee to demonstrate an ability to pay, and that Debtor's non-filing spouse's most recent case was dismissed because Debtor was too far delinquent by the time Debtor had sufficient income to fund the plan.

In light of the Debtor submitting supplemental documentation, the court continued the hearing on Trustee's Objection to allow further assessment of plan feasibility. Therefore, the hearing on Creditor's objection will be continued for the same reason.

The hearing is continued to January 14, 2019 at 2:00p.m.

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 CERTIS PN 1, 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 hearing on the Objection to Confirmation of the Plan is continued to January 14, 2019 at 2:00p.m.