

**UNITED STATES BANKRUPTCY COURT  
Eastern District of California**

Honorable Christopher D. Jaime  
Robert T. Matsui U.S. Courthouse  
501 I Street, Sixth Floor  
Sacramento, California

**PRE-HEARING DISPOSITIONS COVER SHEET**

**DAY: TUESDAY**

**DATE: November 17, 2020**

**CALENDAR: 1:00 P.M. CHAPTER 13**

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

**No Ruling:** All parties will need to appear at the hearing unless otherwise ordered.

**Tentative Ruling:** If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule, or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

**Final Ruling:** Unless otherwise ordered, there will be no hearing on these matters and no appearance is necessary. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

**Orders:** Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within seven (7) days of the final hearing on the matter.

UNITED STATES BANKRUPTCY COURT  
Eastern District of California

Honorable Christopher D. Jaime  
Bankruptcy Judge  
Sacramento, California

November 17, 2020 at 1:00 p.m.

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1. [19-21503](#)-B-13 JOHNNY DUANGSAWAT MOTION TO MODIFY PLAN  
[JCK-2](#) Gregory J. Smith 10-1-20 [[36](#)]

**Final Ruling**

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d) (2), 9014-1(f) (1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f) (1) (B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to permit the requested modification and confirm the modified plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor has filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The motion is ORDERED GRANTED for reasons stated in the minutes. Counsel for the 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.

The court will issue an order.

2. [18-21214](#)-B-13 JOSE PATINO  
[PGM-5](#) Peter G. Macaluso

MOTION FOR COMPENSATION FOR  
PETER G. MACALUSO, DEBTORS  
ATTORNEY(S)  
10-19-20 [[106](#)]

### Final Ruling

The motion has been set for hearing on 28-days notice. Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to grant the motion for compensation.

### Request for Additional Fees and Costs

As part of confirmation of the Debtor's Chapter 13 plan, Peter G. Macaluso ("Applicant") consented to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases (the "Guidelines"). The court authorized payment of fees and costs totaling \$4,000.00, which was the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dkt. 62. Applicant now seeks additional compensation in the amount of \$1,500.00 in fees and \$0.00 in costs.

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkt. 110.

To obtain approval of additional compensation in a case where a "no-look" fee has been approved in connection with confirmation of the Chapter 13 plan, the applicant must show that the services for which the applicant seeks compensation are sufficiently greater than a "typical" Chapter 13 case so as to justify additional compensation under the Guidelines. *In re Pedersen*, 229 B.R. 445 (Bankr. E.D. Cal. 1999) (J. McManus). The Guidelines state that "counsel should not view the fee permitted by these Guidelines as a retainer that, once exhausted, automatically justifies a fee motion. . . . Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation." Guidelines; Local Rule 2016-1(c)(3).

Applicant asserts that it provided services greater than a typical Chapter 13 case because it was unanticipated that the Debtor would require an extension of the plan to a term of 84 months pursuant to the CARES Act, subsection (d)(1) to 11 U.S.C. § 1329. Applicant provided a total of 5.60 hours in unanticipated, post-petition work at a rate of \$300.00 per hour. The court finds the hourly rates reasonable and that the Applicant effectively used appropriate rates for the services provided. The court finds that the services provided by Applicant were substantial and unanticipated, and in the best interest of the Debtor, estate, and creditors.

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

Additional Fees	\$1,500.00
Additional Costs and Expenses	\$ 0.00

The motion is ORDERED GRANTED for additional fees of \$1,500.00 and additional costs and expenses of \$0.00.

The court will issue an order.

3. [19-24520](#)-B-13 GABRIEL/MARIA CECILIA CONTINUED MOTION FOR RELIEF  
[EAT-1](#) TAURO FROM AUTOMATIC STAY  
**Thru #4** Gregory J. Smith 9-24-20 [[22](#)]  
DEUTSCHE BANK NATIONAL TRUST  
COMPANY VS.

**Final Ruling**

The motion has been set for hearing on 28-days notice. Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed.

Due to court closures in response to the COVID-19 pandemic, the court has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f).

The court's decision is to deny the motion without prejudice..

Deutsche Bank National Trust Company ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 8407 Clifford Drive, Stockton, California (the "Property"). Movant has provided the Declaration of Rosa Berto to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Berto Declaration states that the Debtors are delinquent in tax advances or other changes due but unpaid in the total amount of \$7,750.54. Filed as an exhibit is the San Joaquin County 2019 - 2020 Property Tax Bill. Dkt. 26, exh. 5.

Opposition was filed by the Debtors stating that they reached an agreement with Movant in which the \$7,750.54 in unpaid supplemental county taxes will be added to Debtors' modified plan set for hearing on November 17, 2020. See Item #4, JCK-1. The agreement is that Movant is advancing the money for the supplemental county taxes and will amend its proof of claim to add the \$7,750.54. Debtors' plan payments to the Chapter 13 Trustee will be increased to provide for Movant's amended proof of claim.

Movant did not file a reply to Debtors' opposition and did not file any opposition to Debtors' motion to modify at Item #4, JCK-1.

The motion for relief from stay is therefore denied without prejudice.

The motion is ORDERED DENIED WITHOUT PREJUDICE for reasons stated in the minutes.

The court will issue an order.

4. [19-24520](#)-B-13 GABRIEL/MARIA CECILIA MOTION TO MODIFY PLAN  
[JCK-1](#) TAURO 9-29-20 [[28](#)]  
Gregory J. Smith

**Final Ruling**

The motion been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at

least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed.

The court has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f).

The court's decision is to not permit the requested modification and not confirm the modified plan.

First, the Debtors have failed to file supplemental Schedule I and/or Schedule J to support the increased plan payment beginning in January 2021. Without the updated schedules, it cannot be determine whether the proposed plan is feasible. Although the Debtors state that they have a track record of making their plan payments and are capable of increasing their plan payment come January 2021, this is merely speculative. Debtors' response states that they operate three care-homes and that the effects of COVID-19 "mak[es] budget adjustments difficult." Dkt. 38, para. 2. This directly contradicts Debtors' assertion that they can afford an increase in plan payments.

Second, although creditor Deutsche Bank National Trust Company c/o Carrington Mortgage Services, LLC does not object to the terms of the modified plan, it has not filed an amended proof of claim to add the \$7,750.54 in unpaid supplemental county taxes. See Item #3, EAT-1. Therefore, the Nonstandard Provisions in Debtors' plan cannot be administered. The Debtors' response that the creditor will file an amended proof of claim "in the immediate future" is unsupported and the creditor itself has failed to file any declaration stating that it will do so.

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

The court will not continue this matter for two months to January 19, 2021, as requested by the Debtors.

The motion is ORDERED DENIED for reasons stated in the minutes.

The court will issue an order.

5. [19-26327](#)-B-13 STEPHANIE TEMPLETON  
[AP-1](#) Thomas O. Gillis

MOTION FOR CONSENT TO ENTER  
INTO LOAN MODIFICATION  
AGREEMENT  
10-16-20 [[27](#)]

DEBTOR DISMISSED: 10/18/20

**Final Ruling**

The case was dismissed on October 18, 2020. Therefore, the motion to enter into a loan modification agreement is denied as moot.

The motion is ORDERED DENIED AS MOOT for reasons stated in the minutes.

The court will issue an order.

6. [18-26239](#)-B-13 MANUEL/CRYSTAL TRUJILLO MOTION TO MODIFY PLAN  
[MSN-1](#) Mark S. Nelson 10-1-20 [[40](#)]  
**Thru #7**

**Final Ruling**

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to permit the requested modification and confirm the modified plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtors have filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The motion is ORDERED GRANTED for reasons stated in the minutes. Counsel for the Debtors 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.

The court will issue an order.

7. [18-26239](#)-B-13 MANUEL/CRYSTAL TRUJILLO MOTION FOR COMPENSATION BY THE  
[MSN-2](#) Mark S. Nelson LAW OFFICE OF MARK S. NELSON  
FOR MARK S. NELSON, DEBTORS  
ATTORNEY(S)  
10-1-20 [[45](#)]

**Final Ruling**

The motion has been set for hearing on 28-days notice. Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to grant the motion for compensation.

**Fees and Costs Requested**

Mark S. Nelson ("Applicant"), the attorney to Chapter 13 Debtors, makes a request for the allowance of \$2,050.00 in fees and \$0.00 in expenses. Debtors had been represented by the late Randall K. Walton. Mr. Walton had filed a Disclosure of Compensation of Attorney for Debtors on October 2, 2018, listing total attorney fees in the amount of \$4,000.00, of which \$750.00 had been paid pre-petition and \$3,250.00 was to be paid through the plan. Prior to Mr. Walton's passing, \$1,200.00 had been paid to him through the plan.

Applicant substituted into the case on August 26, 2020, with no payments received directly by the Debtors and instead accepting the remainder of attorney's fees of \$2,050.00 to be paid through the plan pursuant to Local Bankr. R. 2016-1(c). At

present, \$0.00 has been paid to Applicant.

Applicant does not provide any task billing statement. However, a review of the court's docket shows that the Applicant has provided services beneficial to the Debtors and the bankruptcy estate in the form of filing amended schedules, amended summary of schedules of assets and liabilities, amended rights and responsibilities, amended disclosure of attorney compensation, and a modified plan that is confirmed at Item # 6, MSN-1.

Applicant is allowed, and the Trustee is authorized to pay, \$2,050.00 through the plan.

The motion is ORDERED GRANTED for fees of \$2,050.00 and costs and expenses of \$0.00.

The court will issue an order.



8. [20-24252](#)-B-13 CHRISTINA/RICHARD LOPEZ OBJECTION TO CONFIRMATION OF  
[RDG-1](#) Michael K. Moore PLAN BY RUSSELL D. GREER  
10-26-20 [[18](#)]

**Final Ruling**

The Chapter 13 Trustee having filed a notice of withdrawal of its objection and motion, the objection and motion are dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

There being no other objection to confirmation, the plan filed September 3, 2020, will be confirmed.

The objection is ORDERED DISMISSED WITHOUT PREJUDICE for reasons stated in the minutes.

IT IS FURTHER ORDERED that the plan is CONFIRMED and counsel for the Debtors 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.

The court will issue an order.

9. [20-24258](#)-B-13 SHAHAR JONES  
[RDG-1](#) Peter G. Macaluso

OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
10-26-20 [[22](#)]

CONTINUED TO 1/05/2021 AT 1:00 P.M. DEBTOR TO PROVIDE CHAPTER 13 TRUSTEE WITH REQUESTED INFORMATION REGARDING VALUE OF REAL PROPERTY BY 12/15/2020. CHAPTER 13 TRUSTEE TO FILE SUPPLEMENTAL RESPONSE AS TO WHETHER ITS ISSUES ARE RESOLVED BY 12/30/2020.

**Final Ruling**

No appearance at the November 17, 2020, hearing is required. The court will issue a minute order.

### **Final Ruling**

The motion has been set for hearing on 28-days notice. Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to value the secured claim of Internal Revenue Service at \$5,104.00.

Debtors' motion to value the secured claim of Internal Revenue Service ("Creditor") is accompanied by Debtors' declaration. Debtors are the owners of various personal property including four vehicles, household goods, electronics, wearing apparel, wedding bands, cash, bank deposits, and security deposits ("Personal Property"). Debtors do not have any interest in real property. After deducting the secured liens, there is only \$5,104.00 in equity available in Debtor's Personal Property for the tax lien to attach. As the owner, Debtors' 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).

### **Proof of Claim Filed**

The court has reviewed the Claims Registry for this bankruptcy case. Claim No. 6-1 filed by Internal Revenue Services is the claim which may be the subject of the present motion.

### **Discussion**

In the Chapter 13 context, the replacement value of personal property used by a debtor for personal, household, or family purposes is "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." See 11 U.S.C. § 506(a)(2). The time limitation to offer the fair market value of personal property, including furniture, appliances, and boats, is more than one year prior to the filing of the petition. See 11 U.S.C. § 1325(a).

The total dollar amount of secured claims with the Internal Revenue Service is \$5,105.13 as stated in the Claim No. 6-1, p. 4. Debtors assert that the price a retail merchant would charge for the Personal Property is \$19,894.00. After deducting liens on two of the vehicles, the remaining equity available in the Personal Property is \$5,104.00. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of \$5,104.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

The motion is ORDERED GRANTED for reasons stated in the minutes.

The court will issue an order.

11. [20-20387](#)-B-13 PABLO/TERESA CHAGOYA OBJECTION TO DEBTOR'S CLAIM OF  
[RDG-3](#) Charles L. Hastings EXEMPTIONS  
10-5-20 [[72](#)]

**Final Ruling**

The objection has been set for hearing on at least 28-days the notice required by Local Bankruptcy Rule 9014-1(f) (1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f) (1) (B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed.

Due to court closures in response to the COVID-19 pandemic, the court has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f).

The court's decision is to sustain the objection to Debtors' claim of exemption.

The Trustee objects to the Debtors' use of California Code of Civil Procedure § 704.140 to claim exempt \$0.00 in a potential claim in a class action lawsuit against Freedom Mortgage. Dkt. 57, p. 4. That code section exempts a debtor's interest in a personal injury cause of action. As such, Debtors' utilization of this code section to exempt a potential claim against a mortgage company is inappropriate.

The Debtors filed a response stating that they withdraw their exemption to the potential claim against Freedom Mortgage. However, no amended Schedule C appears on the court's docket.

Therefore, the Trustee's objection is sustained and the claimed exemption is disallowed.

The objection is ORDERED SUSTAINED and the claimed exemption DISALLOWED for reasons stated in the minutes.

The court will issue an order.

12. [20-20387](#)-B-13 PABLO/TERESA CHAGOYA CONTINUED MOTION TO APPROVE  
[NAR-2](#) Charles L. Hastings LOAN MODIFICATION  
**Also #11** 10-23-20 [[89](#)]

**Final Ruling**

This matter was continued from November 10, 2020, to allow any opposition to be filed by Friday, November 13, 2020, at 5:00 p.m. No opposition was filed. The conditional ruling granting the motion to approve loan modification at docket 106 shall be the court's final decision. The continued hearing on November 17, 2020, at 1:00 p.m. is vacated.

The court will issue an order.