

UNITED STATES BANKRUPTCY COURT

Eastern District of California

**Honorable Ronald H. Sargis**

Chief Bankruptcy Judge

Sacramento, California

**April 2, 2019 at 3:00 p.m.**

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1. [17-27346-E-13](#)      **KENNETH TABOR**      **MOTION TO MODIFY PLAN**  
[SS-6](#)      **Scott Schumaker**      **2-19-19 [148]**

**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.

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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 February 19, 2019. By the court's calculation, 42 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).

<b>The Motion to Confirm the Modified Plan is denied.</b>
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Kenneth Tabor ("Debtor") seeks confirmation of the Modified Plan because Debtor fell behind in plan payments after taking time off work to care for his girlfriend after she suffered a heart attack. Declaration ¶ 6, Dckt. 150. The Modified Plan provides for \$26,280.00 to be paid in through

**April 2, 2019 at 3:00 p.m.**

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February 2019, and payments of \$2,470.00 thereafter through the plan term. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

## **CHAPTER 13 TRUSTEE'S RESPONSE**

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Response on March 18, 2019. Dckt. 156.

Trustee argues the plan overstates the arrearage necessary to be cured on the claim of U.S. Bank. The Modified Plan proposes an extra \$7,000.00 paid through the plan where Trustee calculates only \$2,078.55 is necessary.

Trustee argues further that the Modified Plan provides \$1,750.00 was paid to Debtor's counsel before filing and \$2,250.00 remains to be paid, where the Confirmed Plan states the amount paid before filing was \$2,000.00.

## **DISCUSSION**

The Modified Plan provides \$1,750.00 was paid to Debtor's counsel before filing and \$2,250.00 remains to be paid. However, both the Confirmed Plan and Order Confirming provide that \$2,000.00 was paid and \$2,000.00 remains. Dckt. 96, 118. The plan providing inaccurate statements as to amounts owing for attorney's fees indicates the Modified Plan is not feasible. 11 U.S.C. § 1325(a)(6).

Additionally, the plan overstates the arrears owing to U.S. Bank as a Class 1 claim. However, based on Debtor's Schedules Debtor has the ability to make the stepped up payments. Dckt. 24.

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 Kenneth Tabor ("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.

2. [18-22861](#)-E-13      CALEB/EMILY HUMPHREY      CONTINUED MOTION TO MODIFY  
[LBG-1](#)      Lucas Garcia      PLAN  
11-13-18 [24]

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

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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 November 13, 2018. 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 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).

<b>The Motion to Confirm Modified Plan is denied.</b>
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Caleb Christian Humphrey and Emily Suzanne Humphrey ("Debtor") seek confirmation of the Modified Plan, adjusting payments to account for unexpected expenses, including a complete breakdown of one of Debtor's vehicles. Dckt. 26. The Modified Plan provides for payments of \$1,350 for 2 months, \$0 for 3 months, and \$1,450 for the remaining 55 months of the plan term. Dckt. 30. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

#### CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on December 3, 2018. Dckt. 33. Trustee opposes the Motion on the basis that the plan would take 96 months to complete because the additional provisions of the plan provide for \$13,600 (Dckt. 30 at p. 7) for pre-petition arrears to Ocwen

Loan Servicing, LLC (“Creditor”) where the scheduled claim actually only asserts arrears of \$10,380.00. Dckt. 30 at p. 3.

## **PRIOR HEARINGS & SUPPLEMENTAL PLEADINGS**

At the December 18, 2018 hearing the court continued the hearing on the Motion to February 12, 2019 at 3:00p.m. Civil Minutes, Dckt. 36.

For the February 12, 2019 hearing, no party to this Contested Matter filed further pleadings. Civil Minutes, Dckt. 42. However, the court reviewed the docket and determined Debtor filed an Objection to claim of Creditor on the basis it overstates arrears to be \$20,430.00 where only \$13,330.80 is necessary to cure. Dckt. 37. Based on the Objection, the court continued the hearing to March 12, 2019. Dckt. 42.

At the March 12, 2019 hearing the court noted the Objection was sustained, but that there was a delinquency in plan payment upwards of \$4,200.00. The court continued the hearing to April 2, 2019 to allow the default to be addressed.

## **TRUSTEE’S OPPOSITION**

Trustee filed a Supplemental Response on March 19, 2019. Trustee’s present grounds for opposition are:

- A. Debtor’s plan payment would need to increase by \$225.00 in the remaining 51 months of the plan in order to pay 100 percent of unsecured claims as provided in the proposed plan.
- B. Debtor is \$4,350.00 delinquent in plan payments.

## **DISCUSSION**

Debtor is \$4,350.00 delinquent in plan payments. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Additionally, Trustee’s calculations support that Debtor would need to increase plan payments by \$225.00 in the remaining 51 months of the plan in order to pay 100 percent of unsecured claims as provided in the proposed plan. Declaration ¶ 3.a., Dckt. 50. Therefore the Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

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 Confirm the Modified Chapter 13 Plan filed by Caleb Christian Humphrey and Emily Suzanne Humphrey (“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 Modified Plan is denied.

3. [18-24658-E-13](#) [CRG-2](#) **WILLIAM FREEMAN AND  
CARLA TAVORMINA  
FREEMAN  
Carl Gustafson** **MOTION FOR COMPENSATION FOR  
CARL R. GUSTAFSON, DEBTORS'  
ATTORNEY  
2-28-19 [38]**

**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.

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 28, 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). The defaults of the non-responding parties and other parties in interest are entered.

<b>The Motion for Allowance of Professional Fees is <span style="color: red;">XXXXXXXXXX</span>.</b>
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Carl Gustafson, the Attorney ("Applicant") for William and Carla Freeman, the Chapter 13 Debtor ("Client"), makes a Request for the Additional Allowance of Fees and Expenses in this case.

Fees are requested for the period June 5, 2018, through January 18, 2019. Applicant requests fees in the amount of \$5,287.50 and costs in the amount of \$125.00.

The Order Confirming Chapter 13 Plan in this case was issued October 17, 2018. Order, Dckt. 36. While the Confirmed Plan (Dckt. 8) provided for \$6,000.00 as a set fee in this case, the Order did not expressly provide for the set fee.

## **TRUSTEE'S OPPOSITION**

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on March 13, 2019. Trustee opposes the Application on the following grounds:

1. Only 33 days' notice was provided where 35 was required.
2. The Application and supporting Declaration were filed as a single document despite the Local Bankruptcy Rules.
3. The Application does not meet the requirements of Federal Rule of Bankruptcy Procedure 9013.
4. Exhibits A and B were not included on the Proof of Service.
5. There is no task-billing analysis.

## **APPLICANT'S REPLY**

Applicant filed a Reply to Trustee's Opposition on March 26, 2019. Dckt. 46. Applicant responds to Trustee's grounds for opposition as follows:

1. Notice was sufficient, as Local Bankruptcy Rule 9014-1(f)(1) only requires 28 days' notice.
2. The Application is based on the court's official form EDC 003-095-12. Therefore, Applicant's failure to comply with Federal Rule of Bankruptcy Procedure 9013 is not Applicant's fault.
3. Applicant complied with the Local Bankruptcy Rule requiring filing of separate documents with exception of the Application and Declaration filed using the joint form EDC 003-095-12.
4. While Exhibits A and B were not listed on the Proof of Service, they were incorporated through the Application by reference. Further, service was actually effected.
5. A task-billing analysis is not required in relatively low-value fee applications.

## **DISCUSSION**

### **Overview of Bankruptcy Case**

This bankruptcy case was filed on July 25, 2018. The Disclosure of Compensation of

Attorney for Debtor filed in this case states that Applicant has agreed to accept \$6,000.00 for legal services rendered or to be rendered to the Debtor. Dckt. 1 at 64. For the scope of services beyond the pre-petition review, preparation of petition and schedules, and representation of Debtor at the First Meeting of Creditors, the direction is given to review the Rights and Responsibilities of Consumer Debtors and their Attorneys. *Id.*

The Rights and Responsibilities document provides the following disclosure of the fees to be paid to Applicant in this case:

“Initial fees charged in this case are \$6000.00 , and of this amount, \$1655.00 was paid by the Debtor before the filing of the petition. While this initial fee should be sufficient to fully and fairly compensate counsel for all pre-confirmation services and most post-confirmation services rendered in the case, where substantial and unanticipated post-confirmation work is necessary, the attorney may request that the court approve additional fees. If additional fees are approved, they shall be paid through the plan by the chapter 13 trustee unless otherwise ordered. The attorney may not receive fees directly from the Debtor.”

Dckt. 7 at 3. This states that Applicant has opted for a set fee of \$6,000.00, with the ability to seek additional fees for substantial and unanticipated post-confirmation work. See L.B.R. 2016-1(c).

The Order confirming the Plan provides with respect attorney’s fees that compensation will be approved as provided under an 11 U.S.C. § 330 and § 329 analysis. Dckt. 36 at 2. The court has not approved a set attorney fee for Applicant.

#### **Attorney Fee Motion Form Used by Applicant**

Applicant has used Eastern District of California Form EDC 3-095. Dckt. 38. Applicant is correct that this form appears to not comply with the basic pleading rules in this District.

#### **Review of Minimum Pleading Requirements for a Motion and EDC Form 3-095.**

The Supreme Court requires that the motion itself state with particularity the grounds upon which the relief is requested. FED. R. BANKR. P. 9013. Congress has not provided for waiver of this requirement through use of court forms. The court will review this form with the other judges in the District. The title to this Form is:

#### **APPLICATION AND DECLARATION RE: ADDITIONAL FEES AND EXPENSES IN CHAPTER 13 CASES**

Dckt. 38 at 1. The first sentence of the Applicant states that Applicant is seeking “additional fees” and “additional expenses.” *Id.* However, there has been no approval of prior fees from which “additional fees” may now be allowed.



The form for allowance of “additional fees” is to be used in requesting additional fees as provided in Local Bankruptcy Rule 2016-1(c) when debtor and debtor’s counsel have elected for such counsel to take a fixed fee rather than bill and seek approval of compensation determined at an hourly rate.

**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 post-confirmation 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).

L.B.R. 2016-1(c)(3) [emphasis added].

Applicant needs to prepare and file a motion for attorney’s fees and costs in the same manner as counsel for a bankruptcy trustee or counsel for a debtor in possession. These fees are usually reviewed and allowed in a loadstar analysis, multiplying a reasonable hourly rate times the actual time reasonably and necessarily spent by the attorney. *Morales v. City of San Rafael*, 96 F.3d 359, 363 (9th Cir. 1996), *amended*, 108 F.3d 981 (9th Cir. 1997); *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991).

### **Exhibits Filed In Support of Motion**

An unnumbered exhibit has been filed. Dckt. 40. This appears to be a billing record showing time, charges, and hourly rates. *Id.* This is the type of documentation provided in support of a motion for approval of fees. In the Additional Fee Application Form which is language saying that there is an Exhibit A which is stated to be “time sheets” for all services rendered. Motion, p. 1:26-18; Dckt. 38.

Another Exhibit is filed, which lists an “expense” for appearance counsel. Dckt. 41. The Motion form that doubles as a declaration states that there is an Exhibit B which is an itemization of all out of pocket expenses.

### **Task Billing**

The court finds helpful, and in most cases essential, for professionals to provide a basic task billing analysis for the services provided and fees charged. This has long been required by the Office of the U.S. Trustee, and it is nothing new for professionals in this District. The task billing analysis requires only that the professional organize his or her task billing. The simpler the services provided, the

easier it is for Applicant to quickly state the tasks. The more complicated and difficult to discern the tasks from the raw billing records, the more evident it is for Applicant to create the task billing analysis to provide the court, creditors, and U.S. Trustee with fair and proper disclosure of the services provided and fees being requested.

Included in the Motion is Applicant's raw time and billing records, which have not been organized into categories. Rather than organizing the activities that are best known to Applicant, it is left for the court, U.S. Trustee, and other parties in interest to mine the records to construct a task billing. The court declines the opportunity to provide this service to Applicant, instead leaving it to Applicant who intimately knows the work done and its billing system to correctly assemble the information.<sup>FN.1</sup>.

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FN.1. Applicant argues there is no rule requiring a task billing, but such an analysis is not new to this District and was required well before the modern computer billings systems. More than twenty years ago a bright young associate (not the present judge) developed a system in which he used different color highlighters to code the billing statements for the time period for the fee application. General administrative matters were highlighted in yellow, sales of property in green, adversary proceedings in red, and so on. Subsequently, the billing procedure advanced so that each adversary proceeding was provided a separate billing number so that it would generate a separate billing. Within the bankruptcy case billing number, the time entries were given a code on which the billing system could sort the entries and automatically produce a billing report that separates the activities into the different tasks.  
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### **Service of Exhibits in Support of Application**

Applicant filed the Declaration of Carl Gustafson on March 26, 2019. Dckt. 47. The Declaration states that Exhibits A and B were served on all parties on February 28, 2019. However, no amended or supplemental proof of service has been filed. Thus, in looking at the certificate of service documents it appears that service is defective.

### **Conclusion**

Clearly Applicant has performed valuable services for the Debtor and Estate for which some compensation is warranted. Applicant has opted out of taking a fixed fee for representing the Debtor through confirmation and the normal post-confirmation tasks, with the ability to seek "additional fees" for substantial and unanticipated work.

The exhibit filed at Docket No. 40 is very detailed as to services provided by counsel (\$425 an hour), paralegal (\$175 an hour), and legal assistant (\$75 an hour, for which all of the charges are NC, which is \$0.00). The attorney's charges are about sixty-two percent of the amount and the paralegal charges the balance.

While the Trustee is correct with respect to the Motion, Local Rules, and Federal Rules of Bankruptcy Procedure (for the minimum period for filing opposition), Applicant has provided the court with substantial materials in support of the request for fees.

In reviewing this case, it appears to be a “simple” consumer bankruptcy case. Debtor has been employed since 2016 in his current position, with monthly wages of \$14,583. In addition, there is \$938 a month in rental income. Schedule I, Dckt. 1 at 34-35. On the statement of financial affairs Debtor lists having a home rental since November 2017 to the present. Dckt. 1 at 46. On Schedule A/B they list only the West J Street Property, identified in the Petition as Debtor’s residence (Dckt. 1 at 2), and a timeshare in Las Vegas, Nevada. Dckt. 1 at 10-11.

The Chapter 13 Plan was confirmed on October 17, 2018, having been delayed due to the Chapter 13 Trustee’s Objection to confirmation on grounds that included: Debtor’s proposed plan failing to meet the liquidation test, and Debtor receiving \$10,000 in tax refunds and not providing for payment of such refunds in excess of \$2,000 into the plan. Objection, Dckt. 21. The Plan was confirmed, with the order confirming the Plan including an amendment to provide for payment of the tax refunds in excess of \$2,000.00 to be paid into the plan. Order, Dckt. 36.

Rather than denying the Motion without prejudice, the court determines that the issues presented can be addressed through supplemental pleadings, if necessary.

Applicant is requesting \$5,287.50 in interim attorney’s fees for what appears to be a relatively simple case for which a flat fee would have been \$4,000 from filing to discharge. Possibly this is a more complex case that could be/should have been explained in Applicant’s declaration. A task billing analysis might have provided such information.

At the hearing, **XXXXXXXXXXXXXXXXXXXX**

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 Carl Gustafson (“Applicant”), Attorney for William and Carla Freeman, 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 the hearing on the Motion for Allowance of Professional Fees 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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on February 27, 2019. By the court's calculation, 34 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.

**Pursuant to the Motion to Value Collateral and Secured Claim of the Internal Revenue Service the court determines that the \$29,913.28 is fully secured, with the collateral securing it having a value of at least \$29,913.28 (without including the actual value of the Ford Taurus).**

The Motion filed by Claudia and Edward Jenkins ("Debtor") to value the secured claim of the Internal Revenue Service ("IRS" or "Creditor") is accompanied by Debtor's declaration. Debtor, as stated in their declaration, are the owners of personal property described as:

A.      Household goods and effects worth \$1,500.00

- B. Electronics worth \$1,600.00
- C. Clothes worth \$2,000.00
- D. Jewelry worth \$4,500.00
- E. Chase bank accounts worth \$200.00
- F. A golden one checking account worth \$5.00
- G. Prime America Term-Life insurance plan worth \$1.00
- H. A Ford Taurus “under daughter’s name” worth \$1.00

(collectively, the “Property”). Declaration ¶ 2, Dckt. 45.

Debtor seeks to value the Property at a replacement value of \$9,807.00 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).

### **Creditor’s Claim**

Creditor filed Proof of Claim No. 3-1 on December 17, 2018. The Proof of Claim asserts that \$29,913.28 is a secured claim, that \$39,250.72 is a priority unsecured claim, and that \$0.00 is a general unsecured claim. No specific property subject to the Creditor’s lien is identified in the Proof of Claim. Proof of Claim, No. 3, Official Registry of Claims in this case. However, Proof of Claim No. 9 states that all of Debtor’s real estate, motor vehicles, and “All of debtor(s) right, title and interests in property - 26 U.S.C. § 6321” is cited as the property and basis for the liens.

§ 6321. Lien for taxes.

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that may accrue in addition thereto) shall be a **lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.**

26 U.S.C. § 6321 (emphasis added).

### **DISCUSSION**

The Motion to Value does not identify the personal property which forms the grounds upon which the relief to value the secured claim of \$9,807.00 to be based. Dckt. 42. The Motion does instruct the court to read the Debtor’s declaration in connection with the allegation that the personal

property is valued at \$9,807.00, with Debtor telling the court, “Refer to the Declaration of Debtors filed herewith.”

While it is not the court’s role to plunder other pleading to restate the grounds which should have been originally stated in the Motion, being told to “Refer to the Declaration” intrigued the court. In the Declaration Debtor includes a chart of personal property assets which is part of the grounds for the relief. Declaration ¶ 2, Dckt. 45.

The Declaration provides that there is also real property subject to the tax lien, but asserts that the real property is overencumbered. *Id.* ¶ 3. Debtor also alleges that an unidentified vehicle is being financed and the unstated amount of an obligation is greater than the value of an unidentified vehicle. *Id.* ¶ 4.

In their testimony Debtor makes reference to a 2013 Ford Taurus which is “Under Daughter’s Name” (that terminology not being explained) and has a value of \$1.00. *Id.* ¶ 2.

Beginning with the real property, the court looks to Schedule A/B for the Debtor’s statement under penalty of perjury of value. On Schedule A/B Debtor lists the Forastera Circle Property, stating that the value of the property is \$396,000. Dckt. 15 at 3. But this Schedule further states under penalty of perjury that the “fmv” (a commonly used abbreviation for the term “Fair Market Value”) of \$430,000. *Id.* Debtor then wants to deduct 8% for “cos” (commonly used abbreviation for ‘Costs of Sale), stating a net sales proceeds projection (not Fair Market Value) of \$414,000. No explanation is given for Debtor’s statement that the “Current value of the entire property” as required to accurately respond under penalty of perjury on Schedule A/B is stated by Debtor in good faith to be only \$396,000. <sup>FN. 1</sup>

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FN. 1. \$430,000 minus 8% for costs of sale computes to be \$395,600, not the \$414,000 stated by Debtor. It appears that Debtor is stating the current value of the property is the net sales proceeds, not the actual value. Such is an incorrect statement of value. As the Ninth Circuit Court of Appeals has ruled:

“Furthermore, we have concluded once before that HN5 it is inappropriate to deduct hypothetical costs of sale from the amount of a secured claim when the debtor retains possession of a residence. *See Lomas Mortgage USA v. Wiese*, 980 F.2d 1279, 1285 (9th Cir. 1992), vacated on other grounds, 113 S. Ct. 2925 (1993). Although *Lomas* does not bind us, we conclude that its analysis of the issue is persuasive and adopt it.

*Taffi v. United States (In re Taffi)*, 68 F.3d 306, 310, (9th Cir. 1995). Thus, using the numbers from Debtor’s declaration, \$430,000 FMV - (\$409,893.72) First Deed of Trust, there remains \$20,106.28 in value in the real property alone securing the tax lien.

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Then the Ford Taurus with a value of \$1.00 stated in the Declaration for which Debtor makes the vague statement “Under Daughter’s Name.” Debtor is consistent, listed the Ford Taurus on Schedule A/B with a value of \$1.00. Debtor says under penalty of perjury that the vehicle is “[in] good condition -

used by the business and paid but under daughter's name." On its face, this statement appears to say that Debtor has this vehicle, drives this vehicle, uses it in Debtor's business, and Debtor pays for the vehicle, but has placed it in Debtor's daughter's name so therefore it is not Debtor's asset.

The values of the Debtor's interests in real and personal property (excluding the actual value of the Ford Taurus) for Creditor's secured claim is \$29,913.28.

Based on the evidence presented by Debtor, the court determines that Creditor's secured claim of \$29,913.28 is fully secured.

The Motion is granted.

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

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

The Motion to Value Collateral and Secured Claim filed by Claudia and Edward Jenkins ("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 the Internal Revenue Service secured by an asset described as household goods, electronics, clothing, jewelry, Chase and Golden One bank checking accounts, a life insurance policy, and the 200 Forastera Circle, Sacramento, California real and personal property ("Property") is determined to be a secured claim in the amount of \$29,913.28, and the balance of the claim is an unsecured claim (whether priority or general unsecured claim) to be paid through the confirmed bankruptcy plan.

5. [18-27699-E-13](#)      **WALTER ZWALD AND CYNTHIA      MOTION TO EMPLOY DICKSON**  
[DBJ-2](#)                      **RAITT-ZWALD                      REALTY**  
                                 **Douglas Jacobs                      AS BROKER**  
   **3-5-19 [52]**

**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.

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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 March 5, 2019. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

<p><b>The Motion to Employ is <span style="color: red;">XXXXXXXXXX</span>.</b></p>
--

Walter Andrew Zwald and Cynthia Ann Raitt-Zwald ("Debtor") seeks to employ Dickson Realty, a brokerage firm ("Broker") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Debtor seeks the employment of Broker in connection with the listing and sale of unimproved land on Highway 45 in Colusa County, California, Accessor's Parcel Number 015-310-050 ("Property").

Debtor argues that Broker's appointment and retention is necessary Debtor used the Broker's services in connection with selling the Property, which sale was approved by the court. Amended Order, Dckt. 66.

Barbi Boeger provides testimony that she is a licensed broker by the State of California, License No. DRE01989305. Declaration, Dckt. 54. Barbi Boeger further testifies that she is an employee at the real estate firm Century 21 Select Group, which firm does not represent or hold any



interest adverse to Debtor or to the Estate and has no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

The services have already been rendered and the sale of the property from which the commission is sought has already been approved. Amd. Ord., Dckt. 66. No grounds are stated as to why the employment should be granted retroactively. The Motion does make reference to Barbie Boeger of Dickson Realty having been employed pre-petition and implicitly it is Ms. Boeger and Dickson Realty that actively marketed the property and generated the sale that was approved by the court.

### **Requested Commission**

The Amended Order provided for 5 percent of the gross sales to be held by Debtor's counsel Douglas Jacobs pending determination of what real estate commission should be paid. *Id.* Debtor's Declaration also references a 5 percent commission. However, the Boeger Declaration (Dckt. 54) and Listing Agreement filed as Exhibit B (Dckt. 56) indicate the commission agreed on was 6 percent. The 5 percent amount is that which the court allowed to be held back from the sale proceeds in light of there being no broker approved as of the time of the sale. <sup>FN. 1.</sup>

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FN. 1. It appears that the court's minutes from the February 12, 2019 hearing are not on the Docket. That is being remedied. At the hearing, in the course of resolving the disputes and interests of all parties, all such parties with secured claims agreed on the record to a commission amount of 5 percent being held from escrow to be paid the broker upon authorization of such employment.  
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### **DISCUSSION**

#### **Identity of party to be Employed**

In the Motion, Debtor seeks retroactive employment for Broker. However, the Boeger Declaration (Dckt. 54) states that she is a real estate associate with Century 21 Select Group - not Dickson Realty.

The Listing Agreement filed as Exhibit B (Dckt. 56) indicates the real estate firm "Century 21 Jeffries Lydon" is the actual party Debtor contracted with for the marketing and sale of the property.

The Purchase and Sale Agreement, Exhibit C (Dckt. 56) states that listing and selling agent is "C-21 Jeffries Lydon."

How Barbi Boeger and Dickson Realty have made their way into the Motion is not supported by the evidence.

At the hearing, xxxxxxxxxxxxxxxx.

#### **Failure to Request Approval of Fees**

Presumably, the purpose of the present Motion is to get the real estate agent for Debtor paid. However, there is no request for fees in the Motion. Furthermore, the Amended Order has not approved fees. Amended Order, Dckt. 45.

At the hearing, ~~XXXXXXXXXXXXXXXXXX~~.

## Conclusion

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

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

~~Taking into account all of the relevant factors in connection with the employment and compensation of ~~XXXXXXXXXX~~ considering the declaration demonstrating that ~~XXXXXXXXXX~~ does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ ~~XXXXXXXXXX~~ as the Broker for the Chapter 13 Estate on the terms and conditions set forth in the Vacant Land Listing Agreement filed as Exhibit B, Dckt. 56.~~

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

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

~~The Motion to Employ filed by Walter A. Zwald and Cynthia A. Raitt-Zwald ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing;~~

~~**IT IS ORDERED** that the Motion to Employ is ~~XXXXXXXXXX~~, and Debtor is authorized to employ Barbi Boeger as the Broker for Debtor on the terms and conditions as set forth in the Vacant Land Listing Agreement filed as Exhibit B, Dckt. 56.~~

~~**IT IS FURTHER ORDERED** that Douglas Jacobs is shall disburse ~~XXXXXXXXXX~~ to ~~XXXXXXXXXX~~ as compensation as a professional of the Estate from sale proceeds held in client trust account pursuant to prior Amended Order of the court. Dckt. 66.~~

## FINAL RULINGS

6. [10-21957](#)-E-13 OSCAR/RAQUEL OJEDA MOTION TO AVOID LIEN OF  
[BLG-5](#) Chad Johnson CITIBANK (SOUTH DAKOTA), N.A.  
2-19-19 [\[98\]](#)

**Final Ruling:** No appearance at the April 2, 2019 hearing is required.

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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, creditors, parties requesting special notice, and Office of the United States Trustee on February 19, 2019. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

This Motion requests an order avoiding the judicial lien of Citibank (South Dakota), N.A. ("Creditor") against property of Oscar Ojeda and Raquel Ojeda ("Debtor") commonly known as 3467 Nut Plains Drive, Sacramento, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$2,147.13. Exhibit A, Dckt. 102 An abstract of judgment was recorded with Sacramento County on December 29, 2019, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$155,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$301,947 as of

the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(5) in the amount of \$1.00 on Amended Schedule C. Dckt. 103.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided in excess of \$301,948.00 subject to 11 U.S.C. § 349(b)(1)(B).

### **ISSUANCE OF A COURT-DRAFTED ORDER**

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Oscar Ojeda and Raquel Ojeda ("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 judgment lien of Citibank (South Dakota) N.A., California Superior Court for Sacramento County Case No. 34-2008-00017394-CL-CL-GDS, recorded on December 29, 2009, Book 20091229, Page 1499 with the Sacramento County Recorder, against the real property commonly known as 3467 Nut Plains Drive, Sacramento, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

**Final Ruling:** No appearance at the April 2, 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 Debtor’s Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on February 19, 2019. By the court’s calculation, 42 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.

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Christa Lynne Hylen (“Debtor”) has filed evidence in support of confirmation. Declaration, Dckt. 26. The Chapter 13 Trustee, David Cusick (“the Chapter 13 Trustee”) filed a Supplemental Response indicating non-opposition on March 15, 2019. Dckt. 37. 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 Christa Lynne Hylen (“Debtor”) having been presented to the court, and upon review of

the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on February 19, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick ("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.

8.     [18-24602-E-13](#)     **PATRICIA KOKASON**     **MOTION TO CONFIRM PLAN**  
          [PLC-1](#)            **Peter Cianchetta**       **2-18-19 [41]**  
**DEBTOR DISMISSED: 02/25/19**

**Final Ruling:** No appearance at the April 2, 2019 hearing is required.  
-----

The case having previously been dismissed, the Motion is dismissed as moot.

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

**IT IS ORDERED** that the Motion is dismissed as moot, the case having been dismissed, and the Chapter 13 Plan is not confirmed.

9.     [18-22707](#)-E-13     **MICHAEL/PHYLLIS ENOS**     **MOTION TO CONFIRM PLAN**  
          [PLC-3](#)                 **Peter Cianchetta**                 **2-18-19 [51]**

**DEBTOR DISMISSED: 02/25/19**  
**JOINT DEBTOR DISMISSED:**  
**02/25/19**

**Final Ruling:** No appearance at the April 2, 2019 hearing is required.  
-----

The case having previously been dismissed, the Motion is dismissed as moot.

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

**IT IS ORDERED** that the Motion is dismissed as moot, the case having been dismissed, and the Chapter 13 Plan is not confirmed.

**Final Ruling:** No appearance at the April 2, 2019 hearing is required.  
-----

**The Objection to Debtor's Claim of Exemption is dismissed without prejudice.**

David Cusick ("the Chapter 13 Trustee") having filed an Ex Parte Motion to Dismiss the pending Objection on March 22, 2019 Dckt. 64; no prejudice to the responding party appearing by the dismissal of the Objection; the Chapter 13 trustee having the right to request dismissal of the Objection pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by the debtor, Jan Schumann ("Debtor"); the Ex Parte Motion is granted, the Chapter 13 Trustee's Objection is dismissed without prejudice, and the court removes this Objection from the calendar.

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 Debtor's Claim of Exemption filed by David Cusick ("the Chapter 13 Trustee") having been presented to the court, the Chapter 13 Trustee having requested that the Objection itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 64, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection to Debtor's Claim of Exemption is dismissed without prejudice.



11. [19-20125-E-13](#)      **ROBERT/DONNA DECELLE**      **MOTION TO VALUE COLLATERAL OF**  
[PGM-2](#)      **Peter Macaluso**      **FORD MOTOR CREDIT COMPANY,**  
                **LLC**  
                **3-1-19 [37]**

**Final Ruling: No appearance at the April 2, 2019 Hearing is required.**

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on March 1, 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). The defaults of the non-responding parties and other parties in interest are entered.

**The hearing on the Motion to Value Collateral and Secured Claim of Ford Motor Credit Company, LLC ("Creditor") is continued to April 16, 2019 at 3:00 p.m.**

**For the continued hearing, the court orders the attendance of counsel for Debtor and counsel for Ford Motor Credit Company, LLC – No Telephonic Appearances Permitted For the Counsel Ordered to Appear.**

The Motion filed by Robert A. DeCelle, III and Donna Marie DeCelle ("Debtor") seeks to value the secured claim of creditor, Ford Motor Credit Company, LLC ("Creditor"), is accompanied by Debtor's declaration. Debtor is the owner of a 2013 Ford F150 ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$14,000.00 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).

Debtor filed the Declaration of Debtor in support of the Motion. Declaration, Dckt. 40. Debtor's Declaration provides testimony under penalty of perjury the following items on the Vehicle are

in need of repair:

- A. Front end suspension
- B. Noises in rear-end
- C. Back brakes
- D. Electrical broke on driver door
- E. Damaged leather seats
- F. Minor body damage

Debtor's Declaration, executed on January 9, 2019, states further the Vehicle has 72,000.00 miles and a value of \$14,000.00.

Creditor filed a Proof of Claim, No. 1 on January 14, 2019 asserting the Vehicle has a value of \$17,615.03.

## **CREDITOR'S OPPOSITION**

### **Failure To Meet Local Rules**

On March 15, 2019, Creditor filed a forty-five page pleadings titled:

OPPOSITION TO DEBTORS' MOTION TO VALUE COLLATERAL OF  
FORD MOTOR CREDIT COMPANY, LLC;  
DECLARATION OF JACKLYN LARSON IN SUPPORT THEREOF

Dckt. 49. The Opposition consists of multiple documents filed as one document, consisting of:

1. Opposition
2. Declaration of Jacklyn Larson
3. Exhibit "A," Debtor's Schedules A/B
4. Exhibit "B," Debtor's Schedule D
5. Exhibit "C," Creditor's Proof of Claim
6. Exhibit "D," NADA valuation for the Vehicle based on 45,000.00 miles
7. Exhibit "E," NADA valuation for the Vehicle based on 72,000.00 miles

8. A Kelley Blue Book valuation for the Vehicle filed as “Exhibit F”
9. An Autotrader.com valuation for the Vehicle filed as “Exhibit G”

Merging these multiple documents into one mega pleading is not permitted under the Local Bankruptcy Rules for the Eastern District of California. “Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents.” LOCAL BANKR. R. 9004-2(c)(1). Counsel is reminded of the court’s expectation that documents filed with this court comply as required by Local Bankruptcy Rule 9004-1(a). Failure to comply is cause to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

These document filing rules exist for a very practical reason. Operating in a near paperless environment, the motion, points and authorities, declarations, exhibits, requests for judicial notice, and other pleadings create an unworkable electronic document for the court (some running hundreds of pages). It is not for the court to provide secretarial services to attorneys and separate an omnibus electronic document into separate electronic documents that can then be used by the court.

### **Summary of Opposition & Supporting Documents**

In its Opposition Creditor disputes several of Debtor’s factual assertions. First, Creditor notes that Debtor in their Declaration (Dckt. 40) state under penalty of perjury the Vehicle has 72,000.00 miles, whereas the Schedules listed the Vehicle as having only 45,000.00 miles. Second, Creditor asserts the retail value of the Vehicle is somewhere in the \$20,000.00+ range, leaving Creditor’s claim fully secured.

As to Creditor’s second point, several values are offered. Creditor filed in support of its Opposition the Declaration of Jacklyn Larson. The Larson Declaration references the NADA guides filed as Exhibits D and E.

Exhibit D is a NADA valuation which values the Vehicle at \$27,625.00 if it has 45,000.00 miles. *Id.* Exhibit E is a NADA valuation which values the Vehicle at \$25,425.00 if it has 72,000.00. *Id.*

Creditor also provides a Kelley Blue Book valuation purporting a typical listing price of \$24,226.00, and an Autotrader.com listing printout which lists various prices for similar vehicles ranging above \$20,000.00. While these two Exhibits were authenticated by the Larson Declaration, no exception to the rule against hearsay was established.

Creditor’s position is that despite needed repairs identified by Debtor, the Vehicle is worth enough to fully secure Creditor’s claim. Creditor does not actually assert a value, but merely requests the Motion be denied.

### **TRUSTEE’S RESPONSE**

On March 19, 2019, David Cusick, (“the Chapter 13 Trustee”) filed a Response, Dckt. 41. Trustee notes Creditor in its Proof of Claim, No. 1, values the Vehicle at \$17,615.03.

Trustee also notes that Debtor in a prior case filed in 2016 listed the Vehicle having mileage of 45,000.00. *See* Schedule A/B, Bankr. E.D. Cal. No. 16-1627454, Dckt. 1.

## **DEBTOR’S REPLY**

Debtor filed a Reply to Creditor’s Opposition and Statement of Material Dispute of Fact on March 26, 2019. Dckts. 60, 61. Debtor’s Reply states the following:

1. Creditor’s valuation is based on publications and not an actual appraisal of the Vehicle. The parties have arranged for Creditor to inspect the Vehicle and therefore Debtor requests the hearing on the Motion be continued.
2. Debtor has based his valuation on lay testimony.
3. There is a material dispute as to the value of the Vehicle.

Debtor requests the Creditor’s “Objection be denied.”

## **STIPULATION FOR CONTINUANCE**

On March 27, 2019, the parties filed a Stipulation to continue the hearing to April 16, 2019 at 3:00 p.m. Dckt. 64.

## **DISCUSSION**

Creditor here does not actually advance a particular value for the Vehicle. Several values are thrown at the court, some established through evidence and some not, some of the retail value of the Vehicle and some not.

Looking at the NADA clean retain value of \$25,425 (Exhibit “E”) and considering the repairs identified by Debtor, it is clear that such vehicle sitting on a dealer’s lot, in that condition, the retail sales price of such damaged vehicle would be substantially less (not merely the repair costs less).

It appears that Creditor, not in the context of this litigation, may have stated a more accurate value under penalty of perjury when it filed Proof of Claim, No. 1. Creditor states under penalty of perjury that the Vehicle had a value of only \$17,615.03.

Debtor now asserts that the value is only \$3,615.03 less than Creditor has previously stated under penalty of perjury in Proof of Claim No.1.

Debtor has requested a continuance to allow Creditor to further inspect the Vehicle. Based on

the Stipulation of the parties (Dckt. 64), and good cause appearing, the court shall continue the hearing to April 16, 2019 at 3:00 p.m.

Creditor's law firm has appeared regularly in this court over the past many years. It is aware of the rules for the basic preparation of documents. Given the gross noncompliance, it is necessary for the court to conduct the continued hearing in person with the respective counsel to address the practice in the Eastern District of California.

The court also needs to address with Creditor how a response to a motion to value a secured claim can be "denied" (as requested in the multi-document opposition) when it is necessary for the court to value the claim.

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 Robert A. DeCelle, III and Donna Marie DeCelle ("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 hearing on the Motion is continued to April 16, 2019 at 3:00 p.m..

**IT IS FURTHER ORDERED** that Peter Macaluso, Esq., counsel for Debtor, and Randall Mroczynski, Esq., counsel for Ford Motor Credit Company, LLC, and each of them shall appear in person at the continued hearing – No Telephonic Appearances or Appearances by Other Counsel in Their Respective Law Firms permitted for the attorneys ordered to appear.

**IT IS FURTHER ORDERED** that the court suspends the application of Federal Rule of Civil Procedure 41(a)(1)(A) and Federal Rules of Bankruptcy Procedure 7041 and 9014 to this Contested Matter.

12. [19-20125](#)-E-13      ROBERT/DONNA DECELLE      MOTION TO VALUE COLLATERAL OF  
[PGM-3](#)      Peter Macaluso      GOLDEN 1 CREDIT UNION  
3-5-19 [\[44\]](#)

**The hearing on the Motion to Value Collateral and Secured Claim of Ford Motor Credit Company, LLC (“Creditor”) has been continued to April 16, 2019 at 3:00 p.m. by prior order of the court. Dckt. 56.**

13. [19-20125](#)-E-13      ROBERT/DONNA DECELLE      CONTINUED OBJECTION TO  
Peter Macaluso      CONFIRMATION OF PLAN BY  
CREDITOR FORD MOTOR CREDIT  
COMPANY, LLC  
2-28-19 [\[33\]](#)

**Final Ruling: No appearance at the April 2, 2019 Hearing is required.**

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, and Office of the United States Trustee on February 28, 2019. By the court’s calculation, 26 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 hearing on the Objection to Confirmation of Plan is continued to April 16, 2019 at 3:00pm as requested by the Parties in the Stipulation. Dckt. 64.**

Ford Motor Credit Company, LLC (“Creditor”) holding a secured claim opposes confirmation of the Plan on the basis that:

- A. The plan fails to provide for full payment of Creditor’s secured claim; Debtor seeks to value Creditor’s collateral at \$14,000.00 through a motion to value set to be heard April 2, 2019.
- B. Debtor’s proposed plan provides for interest on Creditor’s secured claim at the rate of 4% per annum. Based on the case history Creditor objects to any proposed Plan which fails to pay Creditor’s secured claim at less than 6.5% interest.
- C. Debtor’s proposed plan payments are \$2,160.00 where Debtor’s disposable income is only \$2,020.00.
- D. Debtor’s plan is not proposed in good faith because this is Debtor’s second (recent) case.

#### **STIPULATION FOR CONTINUANCE**

On March 27, 2019, the parties filed a Stipulation to continue the hearing to April 16, 2019 at 3:00 p.m. Dckt. 64.

#### **DISCUSSION**

Based on the Stipulation of the parties (Dckt. 64), and good cause appearing, the court shall continue the hearing to April 16, 2019 at 3:00 p.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 Ford Motor Credit Company, 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 Plan is continued to April 16, 2019 at 3:00pm.