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

**Honorable Ronald H. Sargis**
**Chief Bankruptcy Judge**
**Sacramento, California**

**May 24, 2022 at 2:00 p.m.**

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| **1.** | **22-20404-E-13**<br>**DPC-1** | **SUSANA LOPEZ**<br>**David Ritzinger** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK**<br>**4-18-22 [15]** |

**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).**
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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 April 18, 2022. By the court's calculation, 36 days' notice was provided. 14 days' notice is required.

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

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

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

A. Debtor failed to appear at the First Meeting of Creditors.

B. Debtor has not provided the following 521 documents: pay advices and tax returns.

C. Debtor is delinquent $425.00 in plan payments.

D. Debtor appears to be married by listing California Code of Civil Procedure § 703.140(b) under their claimed exemptions and Statement of Financial Affairs. However, Debtor has failed to file a spousal waiver.

**DISCUSSION**

Trustee's objections are well-taken.

**Failure to Appear at 341 Meeting**

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

**Combined Pay Stubs &Tax Returns**

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

**Delinquency**

Debtor is $425.00 delinquent in plan payments, which represents one month of the $425.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

**Debtor Fails Liquidation Analysis**

Debtor's plan fails the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Trustee states that if Debtor fails to file a Spousal Waiver for use of claimed exemptions, then the Trustee will file Objection to Exemptions which would result in the plan not complying with 11 U.S.C. § 1325(a)(4).

**Trustee's Status Report**

On May 11, 2022, Trustee filed a status report (Dckt. 24) stating:

1. Debtor appeared at continued meeting of creditors.

2. Debtor remains $850.00 delinquent in plan payments.

3. Debtor did not provide any form of identification at the meeting.

4. Debtor may not be able to make plan payments.

5. Debtor has not provided tax returns or pay advices to the Trustee.

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

**Prior Bankruptcy Cases**

Debtor has a prior Chapter 13 case she filed on December 3, 2019, and which was dismissed March 6, 2021. Case 19-27495. Debtor was represented by the same counsel in the 2019 case as she is in the present 2022 case.

Debtor confirmed a Chapter 13 Plan in the 2019 case. On the Statement of Financial Affairs, Part 1, Question 1, Debtor stated that she was married. 19-27495; Dckt. 1 at 36. Though married, Debtor states that income information for her spouse were "N/A," with the court construes to mean "not applicable." It is not clear why income information of a spouse is "not applicable" in a Chapter 13 bankruptcy case.

On Schedule I in the 2019 case, Debtor listed her only income to be disability income of $4,203.33 a month. Id; Dckt. 1 at 31-32. The 2019 bankruptcy case was dismissed due to Debtor being more than eight months in default in the Plan payments. *Id*.; Civil Minutes, Dckt. 25.

Debtor had prior Chapter 7 case, 14-20949, which was filed on November 5, 2014, and in which she was granted a discharge on May 31, 2016. On Schedule I in the Chapter 7 Case Debtor stated that her non-debtor spouse had $3,393 in monthly take-home income and Debtor had "other income" of $1,500 a month. 14-20949; Schedule I, Dckt. 14 at 14-15.

The present bankruptcy case was filed on February 23, 2022. In this case, Debtor states that she has monthly income of only $1,800 in Social Security Benefits. Schedule I; Dckt. 1 at 31-32. Debtor against states that information about the non-debtor spouse is "N/A." Why such information is not applicable for Debtor's Schedule I is not explained.

On the Statement of Financial Affairs, Question 1, Debtor again states that she is married. *Id*. at 36. As before, Debtor lists no income for her non-debtor spouse on the Statement of Financial Affairs, Part 2. *Id*. at 36-37.

On Schedule J, Debtor states having monthly expenses of only ($1,375) for herself and her two teenage daughters. *Id*. at 33-34. With $1,800 in Social Security income, these expenses is stated to leave Debtor with $425 in monthly net income. However, the expenses listed on Schedule J are facially

unreasonable, with some of these unreasonable expenses for a family unit of one adult and two teenagers include:

A. Home Maintenance, Repair, Upkeep.....$0.00

B. Electricity, Heat, Natural Gas.....$90

C. Medical, Dental.....$0.00

D. Transportation (two vehicles listed).....$200

Consistent with the Statement of Financial Affairs in the prior Chapter 13 case, Debtor stated in the current case that she pays the mortgage on property owed by her father in Mexico. Stmt Fin Affairs, Question 7; Dckt. 1 at 38. The information provided includes:

A. Amount of Monthly Payments.....$1,667.82

B. Debtor has been making these payments since October 1, 2018.

C. For the one year period prior to the February 2022 Chapter 13 Filing, Debtor paid a total of.....$21,681.66

With Debtor having only $1,800 in monthly income, payment of $1,667.82 appears to be impossible. Debtor has stated under penalty of perjury that she has only that monthly income from all sources.

The court notes that in responding to the Question 6 on the statement of financial affairs Debtor states that she previously was receiving $1,500 in "Contributions From Family Member & Spouse" a month in 2020, 2021, and through February 23, 2022. Dckt. 1. At 37. No such income is listed on Schedule I.

The court also notes that buried on Schedule H in the 2019 Case reference is made to there being a "Judgment of Legal Separation" with a Rodrigo Hernandez dating back to May 8, 2018. Such information is irrelevant to, and not properly buried on Schedule H.

Finally, one of the "contributors" to Debtor is stated to be Debtor's "Spouse." Not former spouse, not legally separated spouse. It may well be that the "Legal Separation" is a legal fiction created to hide community property from the Chapter 13 Trustee and creditors.

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 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.

**2.** **22-20421-E-13 DPC-1** **LAURIE CHRISTIAN** **Michael Hays** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 4-20-22 [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).**
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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 April 20, 2022. 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. At the hearing ----------.

**The Objection to Confirmation of Plan is sustained and the Plan is not confirmed.**

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

A. Debtor fails best efforts as the plan is only for thirty-six (36) months and unsecured creditors will receive no less than a five (5) percent dividend. Debtor is over median income.

**Debtor's Response**

On May 10, 2022, Debtor's filed a response (Dckt. 24) stating the dividend to unsecured creditors will increase to six (6) percent based on the US Small Business Administration filing a lower claim and Sunnova Solar filing an unsecured claim.

Debtor states if they are allowed to deduct $249.00 business expenses from her $1,417.11 gross, on her Form 122C-1, then she would have a net income of $1,168.11. Combined with her husband, they would have an annualized amount of $83,028.60 which is below median income by $406.40 as of the filing of their case.

**DISCUSSION**

Trustee's objections are well-taken.

**Plan Term is Fewer Than 60 months**

The Plan violates 11 U.S.C. § 1325(b)(4)(B) because the Plan will complete in less than the permitted sixty months without providing full payment of all allowed unsecured claims. Debtor has proposed a plan term of 36 months, but Debtor has proposed to pay less than the full amount of allowed unsecured claims. Debtor claims they are below median income. Under 11 U.S.C. § 1325, a plan can be for three (3) years if the Debtor is below median income.

Debtor's Opposition appears to admit that Debtor is over median income and that the improper pulling out $249.00 of her income a month would then allow Debtor and her non-debtor spouse to slide under the $83,435.00 median income by $406.40. Debtor's counsel states:

> If the Debtor had been allowed to deduct her $249.00 business expenses from, her $1,417.11 gross, on her Form 122C-1, as some **courts other than the 9th circuit would allow her to do,** the resulting net income of $1,168.11 combined with her and her husband's gross wage income would have come to $6,919.05 or an annualized amount of $83,028.60 and they would have been below median income by $406.40, the cap on the filing date of their case for a family of two being $83,435. This would have permitted their proposed three year plan to be acceptable.

Opposition, p. 3:1-10; Dckt. 24. (Emphasis added.) Debtor further argues that if the case is dismissed and a new case is filed, then it is likely Debtor could get her income under the Median Income for Debtor and could then do a three year plan. Debtor's counsel suggests that the hearing be continued so Debtor can provide later information.

It appears that Debtor wants to use post-petition information for the Median Income calculation on Form 122C-1.

Debtor commenced this case on February 25, 2022. It is in Part 3 of the Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period that the Commitment Period computation is made. For Debtor, that is found at Docket 13, beginning page 4 fo the Form 122C-1.

The first and only income number required is the total average monthly income as stated on line 11 of the Form 122C-1. This average monthly income is computed using the "Average Monthly Income that [Debtor and Debtor's spouse] received from all sources during the **6 full months before you file this bankruptcy case**." Form 122C-1, Part 1, instruction before completing paragraphs 2 - 11; Dckt. 13 at 18. Debtor computes the average monthly income during the **6 full month before filing** the bankruptcy case to be $7,168.05. *Id*., ¶ 11.

No matter what post-petition changes occur to this income, it does not alter the pre-petition look-back to compute this amount.

This is contrasted with the projected disposable income computation which is a forward looking, actual net monthly future income to fund the plan. As this court has previously noted, which the pre-petition income may require a five year plan, the debtor's monthly payments will be based on post-petition reality.

While Debtor and her non-debtor spouse do not want to suffer through five years of bankruptcy as required by federal law to obtain the extraordinary relief available thereunder (Opposition, p. 3:20-25; Dckt. 24), the Bankruptcy Code does not create an exemption from federal law because Debtor doesn't want to comply with federal law.

Though Debtor's counsel may consider it a "waste of time" to have to file another case, if this one is dismissed, after Debtor is able to "adjust" her future income to slip under the Median Income floor, that is not a valid basis to ignore federal law. Bankruptcy judges are not the granters of what parties merely want, but have the obligation to follow the applicable Federal and State law. Thought of "Judicial Economy" are not a valid basis for a federal judge to ignore the law, thumb the judge's nose at Congress for the laws it wrote, and do whatever the judge deems right is his or her own imperial wisdom.

At the hearing, XXXXXXXXXX

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 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 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.

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|---|---|---|---|
| **3.** | **19-27838-E-13 PLC-3** | **TIAZJANAE WILRIDGE Peter Cianchetta** | **CONTINUED MOTION FOR HARDSHIP DISCHARGE 3-18-22 [83]** |

**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, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on March 18, 2022. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

The Motion for Entry of Hardship Discharge 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 for Entry of Hardship Discharge is xxxxxxxxxx**

Tiazjanae Imani Wilridge ("Debtor") moves for entry of a hardship discharge on the grounds that she lost her job after her car was totaled and therefore cannot afford to continue making her plan payments. Debtor argues that the unsecured creditors have received at least what they would have received if Debtor had filed a Chapter 7 bankruptcy based on what Debtor has already paid into the plan. Debtor additionally argues that modification of her plan is not feasible because her monthly expenses

now surpass her monthly income.

**TRUSTEE'S OPPOSITION**

The Chapter 13 Trustee David P. Cusick ("Trustee") filed an opposition to Debtor's Motion for Hardship Discharge on April 4, 2022. Dckt. 87. Trustee opposes on the following grounds:

A. The Trustee does not show an amended budget was filed. A current (supplemental Schedule I & J, is probably needed so the Court can determine if modification of the plan is practicable.

B. Plan modification may be practicable.

**APPLICABLE LAW**

Section 1328(b) of the Bankruptcy Code states:

> Subject to subsection (d), at any time after the confirmation of the plan and after notice and a hearing, the court may grant a discharge to a debtor that has not completed payments under the plan only if–
>
> > (1) the debtor's failure to complete such payments is due to circumstances for which the debtor should not justly be held accountable;
> >
> > (2) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 of this title on such date; and
> >
> > (3) modification of the plan under section 1329 of this title is not practicable.

The provisions of 11 U.S.C. § 1328(b) are written conjunctively and must all be satisfied to grant a hardship discharge. *See, e.g.*, *In re Cummins*, 266 B.R. 852, 855 (Bankr. N.D. Iowa 2001). Debtor has the burden or proving each of those elements. *Spencer v. Labarge (In re Spencer)*, 301 B.R. 730, 733 (B.A.P. 8th Cir. 2003). "Unsubstantiated and conclusory statements" about a debtor's inability to afford plan payments anymore are insufficient when considering a motion for a hardship discharge. *See, e.g.*, *In re Dark*, 87 B.R. 497, 498 (Bankr. N.D. Ohio 1988).

Some courts have looked for a catastrophic event to justify a hardship discharge, but others have relied upon the plain meaning of 11 U.S.C. § 1328(b) to determine whether a "debtor is justly accountable for the plan's failure." *In re Bandilli*, 231 B.R. 836, 840 (B.A.P. 1st Cir. 1999). Determining whether a debtor is justly accountable is fact-driven, and some considerations include:

A. Whether the debtor has presented substantial evidence that he or she had the ability and intention to perform under the plan at the time of

confirmation;

B. Whether the debtor did materially perform under the plan from the date of confirmation until the date of the intervening event or events;

C. Whether the intervening event or events were reasonably foreseeable at the time of confirmation of the Chapter 13 plan;

D. Whether the intervening event or events are expected to continue in the reasonably foreseeable future;

E. Whether the debtor had control, direct or indirect, of the intervening event or events; and

F. Whether the intervening event or events constituted a sufficient and proximate cause for the failure to make the required payments.

*Id.*

At least one court has found that an economic hardship (i.e., lost business revenue and increased expenses) is not the kind of event "such as death or disability which prevent[s] a debtor, through no fault of his or her own, from completing payments." *In re Nelson*, 135 B.R. 304, 306 (Bankr. N.D. Ill. 1991).

Sub-section 11 U.S.C. § 1328(b)(1) "requires that the circumstances leading to the debtor's failure to make payments be beyond the debtor's control." *In re Cummins*, 266 B.R. at 855. Such aggravating circumstances need to be "truly the worst of the awfuls—something more than just the temporary loss of a job or a temporary physical disability." *In re Nelson*, 135 B.R. at 307 (citation omitted).

The second portion of 11 U.S.C. § 1328(b) requires that unsecured claims receive no less than they would have through Chapter 7 liquidation. That is called the "best interests" test that is identical to Chapter 13 plan confirmation in 11 U.S.C. § 1325(a)(4). *In re Cummins*, 266 B.R. at 856 (citations omitted). If an unsecured claim would not receive a distribution through Chapter 7, then any payment from a Chapter 13 plan satisfies that requirement. *Id.* (citing *In re Nelson*, 135 B.R. at 308).

Finally, 11 U.S.C. § 1328(b)(3) requires that modifying the Chapter 13 plan not be practicable. Proposing a modified plan "is not 'practicable' if there is no source of income to fund the modified plan." *Id.* (citing *In re Bond*, 36 B.R. 49, 51 (Bankr. E.D.N.C. 1984)).

The Ninth Circuit has instructed that "[n]othing in the Code compels a bankruptcy court to close, rather than dismiss, a Chapter 13 case when a debtor fails to complete [a] plan." *HSBC Bank USA, N.A. v. Blendheim (In re Blendheim)*, 803 F.3d 477, 496 (9th Cir. 2015). Furthermore, "the availability of case closure does not eliminate a bankruptcy court's duty to ensure that a debtor complies with the Bankruptcy Code's 'best interests of creditors' test, 11 U.S.C. § 1325(a)(4), and the good faith requirement for confirming a Chapter 13 plan." *Id.* The Ninth Circuit found explicitly that a "bankruptcy court [had] properly conditioned permanent lien-voidance upon the successful completion of the Chapter 13 plan payments. If the debtor fails to complete the plan as promised, the bankruptcy

court should either dismiss the case or, to the extent permitted under the Code, allow the debtor convert to another chapter." *Id.*

**DISCUSSION**

**Missing Amended Budget**

Debtor states she filed an amended budget showing her inability to afford the remaining plan payments to Trustee. Dckt. 83 at 2:4-5. However, Trustee notes that no amended budget was filed. Dckt. 87 at 1:25. The court also does not see an amended budget in the docket. Trustee states that a supplemental Schedule I & J may be needed to determine whether modification of the plan is possible. *Id.*

**Plan Modification May be Practicable**

Trustee cites *In re Sunahara*, 362 B.R. 768, 783 (9th Cir. BAP 2005) to explain that the Bankruptcy Code permits debtors to modify a chapter 13 plan "so as to conclude it in fewer than 36 months, without payment of all claims in full." *Id.* at 2:8-10. While this may be the case, the court still requires Debtor to first file an amended budget to determine whether modification is even a possible. Debtor's Declaration states that her current sources of income are unemployment and cash aid. Dckt. 85 at ¶ 4. Debtor further states that their monthly income decreased to $2,345.00 and that their monthly expenses increased to $2,658.00. *Id.* Based on this, it is unclear whether modification is even feasible. Nevertheless, Debtor's current supplemental Schedule I & J is needed to make such a determination.

At the hearing, counsel for Debtor reported that he had some challenges with e-filing. However, Supplemental Schedule I and J have been filed. The Trustee reported that upon review of those Supplemental Schedules the Trustee does not oppose the granting of the Motion, but there remains the issue of the surplus insurance proceeds, approximately $3,000, that remain to be distributed under the Plan.

A review of the court's file discloses that Debtor did not claim any exemptions in this case. The Debtor can claim an exemption that would exhaust all of the surplus insurance proceeds.

In this case there remains to pay Debtor's counsel $2,000+ in attorney's fees. The Debtor was in attendance at the hearing. To conclude this case and granting this Motion:

A. Debtor shall promptly file an Amended Schedule C;

B. Thereafter the Chapter 13 Trustee shall pay the balance due on Debtor's counsel's attorney's fees; and

C. The Trustee shall disburse the remaining monies of the surplus insurance proceeds to Debtor up to the amount of the exemption claimed therein (which remaining surplus amount is represented to be well less than the amount of Debtor's available homestead exemption).

**Amended Schedule C**
**April 22, 2022**

On April 22, 2022, Debtor filed an Amended Schedule C (Dckt. 95), complying with the April 20, 2022 Court Order (Dckt. 94).

**Status of Case**

The Trustee has not yet filed a status report indicating they completed the disbursements of the proceeds from the car insurance policy. Additionally, the court has not received a proposed order to grant this Motion which would indicate Trustee completed the foregoing.

At the May 24, 2022 hearing, **xxxxxxx**

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 Hardship Discharge filed by Tiazjanae Imani Wilridge ("Debtor") 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 for Entry of Hardship Discharge is xxxxxxxxxxxxxx

**4.** 22-20682-E-13 MRL-1 | **LORRIE BLEVINS** Mikalah Liviakis | **CONTINUED MOTION TO VALUE COLLATERAL OF INTERNAL REVENUE SERVICE**

**4 thru 5** | **3-28-22 [14]**

**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).**

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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, and Creditor on March 28, 2022. By the court's calculation, 15 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.

**The Motion to Value Collateral and Secured Claim of the Internal Revenue Service is xxxxxxxxxxxxxxxxxxxxxxxx**

The Motion filed by Lorrie Lane Blevins ("Debtor") to value the secured claim of the Internal Revenue Service ("IRS" or "Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 16. Debtor describes the following property being encumbered by the IRS lien for the ($113,602) tax debt:

A. Interests in Real Property. Debtor leases real property commonly known as Lot 24 42 Milestone El Dorado National Forest, with a Cabin thereon, from the National Forest Service, (the "Real Property") which lease Debtor states has a value of $25,000.00.

B. Personal Property:

1. Cash on hand.....$100.00
2. Golden One Checking Account.....$ 957.00

3. Household Goods and Furnishings.....$1,500.00
4. Electronics.....$ 100.00
5. Clothes & Shoes.....$ 50.00
6. Jewelry.....$ 10.00
7. 2 dogs.....$ 1.00
8. American General Annuity.....$ 1.00, and
9. 2011 Chevrolet Silverado Pickup.....$5,500.00

the IRS collateral (the "Personal Property"). Debtor testifies that the Personal Property is encumbered by senior liens totaling ($3,700), which leaves a value of $7,510.00 in the Personal Property for the IRS secured claim. There are no liens encumbering Debtor's interests in the Real Property

Debtor seeks to value the Real Property and Personal Property at a replacement value of $11,219.00 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).

Based on these calculations of value and senior liens, Debtor values the IRS secured claim to be $32,519.00.

**Information Under Penalty of Perjury on Debtor's Schedules**

In her Declaration, Debtor testifies under penalty of perjury that the Personal Property (not identifying which) is encumbered by a ($3,700.00) debt secured by a senior lien. However, Debtor does not identify the creditor having such a lien. Declaration, ¶ 6; Dckt. 16.

On Schedule D, Debtor states under penalty of having only one creditor with a secured claim, that being Flagship Credit Acceptance, with a claim of ($3,700.00) which is secured by the vehicle.

On Schedule D the Debtor lists the IRS as having a secured claim, but neglected to identify that the federal tax lien encumbers Debtor's real property, identifying only the interest in the real property.

**No Proofs of Claim Filed**

Neither the IRS nor Flagship Credit Acceptance have filed proofs of claim in this case as of this time. This bankruptcy case was filed on March 22, 2022, so the failure to have filed proofs of claim in the past twenty-one (21) days is not surprising.

**Continuance of Hearing**

At this early, early stage of the bankruptcy case, the court has no evidence of the two secured claims, other than the Schedules and Debtor's declaration. With no proofs of claim filed, there cannot be disbursements on secured claims.

The court notes that in Debtor's prior bankruptcy case, 21-21639, filed on May 1, 2021 and dismissed on March 10, 2022, Flagship Credit Acceptance filed Proof of Claim 7-1 for a secured claim

of ($4,352.56) and the IRS filed Proof of Claim 13-2 for a secured claim of ($113,604.00) priority claim of ($2,500), and general unsecured claim of ($54,663.35).

Given no claim having been filed in this case, valuing it premature.

**Status of Case**

The IRS still has not filed a Proof of Claim. Pursuant to Federal Rules of Bankruptcy Procedure 3002(c)(1), "[a] proof of claim filed by a governmental unit for a claim resulting from a tax return filed under §1308 is timely filed if it is filed no later than 180 days after the date of the order for relief or 60 days after the date of the filing of the tax return." Given the filing date was September 18, 2022, the IRS has until September 18, 2022 to file their Proof of Claim.

**May 24, 2022 Hearing**

At the hearing, XXXXXXXXXX

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 to Value Collateral and Secured Claim filed by Lorrie Lane Blevins ("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 Value the Secured Claim is xxxxxxxx

**5.** **22-20682-E-13 DPC-1** **LORRIE BLEVINS** **Mikalah Liviakis** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **4-27-22 [21]**

**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 April 27, 2022. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

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

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

A. Plan relies on the Motion to Value Collateral of the Internal Revenue Service.

B. Plan may not be in Debtor's best efforts as it appears they have more disposable income than the plan provides.

**DISCUSSION**

Trustee's objections are well-taken.

**Debtor's Reliance on Motion to Value Secured Claim**

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Internal Revenue Service (Dckt. 14). The court continued the hearing to be heard in conjunction with this objection. The court granted / denied the Motion to Value. Therefore, this objection is moot / the plan is not feasible. 11 U.S.C. § 1325(a)(6).

**Failure to Provide Disposable Income / Not Best Effort**

Trustee alleges that the Plan violates 11 U.S.C. § 1325(b)(1), which provides:

> If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

Trustee states Debtor is above median income. Form 122C-2 (Dckt. 19) states Debtor has disposable income of $79.59. This amount over sixty (60) months would yield $4,775.40. Debtor proposes to pay only $853.00 for sixty (60) months with a zero (0) percent dividend to unsecured creditors. The plan fails the means test. Additionally, the current amended Schedule J reflects a net income of $1,046.13. Dckt. 19 at 4.

The Plan proposes to pay a zero percent dividend to unsecured claims, which total $0.00, though Debtor's projected disposable income under 11 U.S.C. § 1325(b)(2) totals $79.59. Thus, the court may not approve the Plan.

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 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 Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

| | | | |
|---|---|---|---|
| **6.** | **21-24084-E-13<br>DPC-1** | **GREGORY/CHO FRENCH<br>Bruce Dwiggins** | **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK<br>1-26-22 [16]** |

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on January 26, 2022. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

**The Objection to Confirmation of Plan is sustained, and the Bankruptcy Plan is Not Confirmed.**

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

A. Trustee asserts that the secured claim of Freedom Mortgage has been properly classified in the Plan, Debtor stating at the First Meeting of Creditors that there are pre-petition defaults owing on this claim.

On February 7, 2022, (after the filing of the Trustee's Objection) Freedom Mortgage filed Proof of Claim 16-1. On Proof of Claim 16-1 Freedom Mortgage asserts that there is a pre-petition default of $41,386.22. POC 16-1, ¶ 9. Spreading that arrearage over 60 months would require an increase of in the monthly plan payment of $770 (including the Chapter 13 Trustee fees relating thereto).

B. Debtor is delinquent in plan payments.

**DISCUSSION**

Trustee's objections are well-taken.

**Freedom Mortgage**

Trustee believes Freedom Mortgage, Class 4 Claim, may be in default. If payments are in default, Debtor improperly classified Freedom Mortgage as a Class 4 Claim.

At the hearing, counsel for the Debtor shows $41,000 arrearage, but there are a number of "reversed" payments. Debtor states that Freedom Mortgage is holding significant suspense amounts.

There is a pre-petition delinquency on this debt, but Debtor disputes the amount and reversals of payments as stated on Creditor's proof of claim.

**Delinquency**

Debtor is $3,000.00 delinquent in plan payments, which represents one month of the $3,000.00 plan payment. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

It is surprising that Debtor would be in default, Debtor having $12,116 a month in take-home income (Schedule I, ¶ 12), ($7,770) in monthly expenses (Schedule J, ¶ 22a), and $4,345 in monthly net income (Schedule J, ¶ 23c). Dckt. 1.

At the hearing, counsel for the Debtor reported that Debtor has made the January 2022 payment in early February 2022. The Trustee confirmed that payment had been made, but Debtor is not current. The Trustee agreed to an extended continuance to allow Debtor to address the default and the correct amount of the pre-petition arrearage to be cured through the Plan.

**Trustee's Status Report**

On May 9, 2022 Trustee filed a status report (Dckt. 24) stating Freedom Mortgage Corporation filed a Proof of Claim (Proof of Claim 16-1) stating Debtor is delinquent $23,668.58. Therefore, Trustee believes Freedom Mortgage is improperly classified as Class 4, making the Plan nonconfirmable under 11 U.S.C. § 1325(a)(1), (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 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 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.

| | | | |
|---|---|---|---|
| **7.** | **22-20485-E-13 DPC-1** | **THERESA/JAMES QUIOCHO Candance Brooks** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 4-20-22 [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.

**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 April 20, 2022. 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. 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 failed to provide 2021 tax returns.

B. The Plan has not been served on all creditors. First Meeting of Creditors was conducted on April 14, 2022, and, after it was concluded, Debtors amended the Schedule H which now shows Laumua Ulberg, (Dckt. 20 at 11) as a creditor. However, Debtors have failed to amend the Master Address List. Therefore, it appears not all creditors have been served with the Notice or the Debtor's Plan.

**DISCUSSION**

Trustee's objections are well-taken.

**Failure to Provide Tax Returns**

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).

**Failure to Comply with Rules of Notice and Service**

Debtors did not follow the proper procedures under Local Bankruptcy Rule 3015-1(c)(3) and Federal Rules of Bankruptcy Procedure 2002(b). Therefore, the Plan cannot be confirmed under 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 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 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.

**8.** **22-20594-E-13 MJD-1** | **DAVID/KATHLEEN HALFORD** **Matthew DeCaminada** | **MOTION TO VALUE COLLATERAL OF GLOBAL LENDING SERVICES** **4-22-22 [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.

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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's Attorney, Chapter 13 Trustee, Creditor and Office of the United States Trustee on April 22, 2022. 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 Global Lending Services ("Creditor") is continued to 2:00 p.m. on xxxxxxx, 2022,** to allow Creditor to conduct discovery concerning the Vehicle securing the claim**.**

The Motion filed by David Alan Halford and Kathleen Louise Halford ("Debtor") to value the secured claim of Global Lending Services ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 24. Debtor is the owner of a 2017 Kia Rio ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $5,274.00 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**

On May 4, 2022, Chapter 13 Trustee, David P. Cusick, filed a Response (Dckt. 26) stating while they do not oppose the Motion to Value, Debtor appears to be reducing the value to an amount higher than $0.00 as required under Class 2(C).

Upon the court's review of Debtor's Plan, Dckt. 16 at 4, Debtor lists the Vehicle as Class 2(C) which is for "claims reduced to $0 based on value of collateral." Debtor is now valuing the collateral at $5,274.00, not $0.00. However, Class 2(B) are "claims reduced based on value of

collateral." Therefore, it appears Debtor inadvertently listed this claim under Class 2(C), when it should be Class 2(B).

**CREDITOR'S OPPOSITION**

On May 9, 2022, Creditor filed an opposition to Debtor's motion stating the fair market value is $9,350.00. Creditor states they are in the process of procuring an appraisal or expert evaluation of the Vehicle. Creditor requests the Motion be denied or a continuance to allow Secured Creditor to procure an appraisal.

**DISCUSSION**

While Proof of Claim No. 7-1 is prima facie evidence of a claim, the Creditor has the actual burden of proof on the claim if that prima facie evidence is rebutted. 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).

> "Inasmuch as Rule 3001(f) and section 502(a) provide that a claim or interest as to which proof is filed is "deemed allowed," the burden of initially going forward with the evidence as to the validity and the amount of the claim is that of the objector to that claim. In short, the allegations of the proof of claim are taken as true. If those allegations set forth all the necessary facts to establish a claim and are not self-contradictory, they *prima facie* establish the claim. Should objection be taken, the objector is then called upon to produce evidence and show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves. But the ultimate burden of persuasion is always on the claimant. Thus, it may be said that the proof of claim is some evidence as to its validity and amount. It is strong enough to carry over a mere formal objection without more."

*Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991) (quoting 3 L. King, Collier on Bankruptcy § 502.02, at 502-22 (15th ed. 1991)). The presumptive validity of the claim may be overcome by the objecting party only if it offers evidence of equally probative value in rebutting that offered by the proof of claim. *Holm* at 623; *In re Allegheny International, Inc.*, 954 F.2d 167, 173-74 (3rd Cir. 1992). The burden then shifts back to the claimant to produce evidence meeting the objection and establishing the claim. *In re Knize*, 210 B.R. 773, 779 (Bankr. N.D. Ill. 1997).

Proof of Claim No. 7-1 asserts Creditor's claim is secured in the amount of $9,350.00. The Proof of Claim is signed by Natalie E. Lea, an Authorized Agent for Global Lending Services LLC. As opposed to the books and records of Global Lending Services LLC, Inc. in which the amount of the debt and the various transactions are maintained, there is nothing to indicate a high probative value as to the statement of the value of this five model year old 2017 Kia Rio.

Debtor, as the owner of the vehicle, states their opinion as to value, concluding that it is $5,274.00. Declaration, Dckt. 24. As the owner, the 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). While Debtor could have made more of an effort in their testimony to describe the condition of the vehicle, any deferred maintenance, damage, required clean-up, such lack of attention to their testimony does not render it irrelevant or not probative.

It appears there may be genuine dispute of the value of the collateral. Creditor appears to be actively seeking evidence to rebut Debtor's claim of the Vehicle's value. The court allows a thirty (30) day continuance for Creditor to obtain an appraisal or expert evaluation Vehicle.

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 to Value Collateral and Secured Claim of Global Lending Services ("Creditor") filed David Alan Halford and Kathleen Louise Halford ("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 to Value Collateral is continued to 2:00 p.m. on **xxxxxxx** , 2022 in Courtroom 33. On or before **xxxxxxx** , 2022, Creditor shall file and serve supplemental opposition pleadings, including admissible evidence of value, and Reply pleadings, if any, shall be filed and served on or before **xxxxxxx**, 2022.

| | | | |
|---|---|---|---|
| **9.** | **22-20106-E-13 DEF-2** | **BARBAREE JERNIGAN AND LANCE LIGHTHALL David Foyil** | **MOTION TO SELL 5-9-22 [46]** |

**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 Not 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 May 9, 2022. By the court's calculation, 15 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice).

Under the facts and circumstances of this Motion, the court shortens the time to the 15 days given.

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

**The Motion to Sell Property is granted.**

BARBAREE ANNETTE JERNIGAN and LANCE HUNTER LIGHTHALL, Chapter 13 Debtor, ("Movant") requests authorization to sell the real property commonly known as 6470 Ridgeway Drive, Pollock Pines, California ("Property").

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

A. Purchase Price: $350,000.00

B. Close of Escrow: Sixty (60) days after acceptance

C. Initial Deposit: $3,500.00

D. Buyer and Seller's Brokerage Firm: Navigate Realty

E. Broker's Fees:

1. Listing Agent - Navigate Realty, 3.5000% Commission, $12,250.00

2. Selling Agent - Navigate Realty, 2.5000% Commission, $8,750.00

**DISCUSSION**

The legal authority for the court authorizing the sale of property during the pendency of a bankruptcy case is found in 11 U.S.C. § 363. This authorizes the sale of property by a bankruptcy trustee. A Chapter 13 debtor may exercise that power in administering property during that bankruptcy case. 11 U.S.C. § 1303. Collier on Bankruptcy provides a discussion of the exercise of a bankruptcy trustee's power to sell property by a Chapter 13 debtor, including:

> Section 1303 grants the debtor, after notice and a hearing,1 the exclusive right in a chapter 13 case to use, sell or lease property of the estate,2 other than in the ordinary course of business under section 363(b). The chapter 13 trustee may not exercise3 the rights or powers conferred by section 363(b),4 although the chapter 13 trustee may use, sell or lease property of the estate pursuant to the terms of a confirmed plan or of the order confirming the plan.5

8 Collier on Bankruptcy P 1303.02 (16th 2022)

Local Bankruptcy Rule 3015-1(b)(1) provides that the Debtor in a Chapter 13 case may not transfer, sell, encumber, or otherwise dispose f any personal or real property with a value of $1,000, other than in the ordinary course of business, without court authorization. Local Bankruptcy Rule 3015-1(h)(D) addresses sale of property before the completion of the Chapter 13 plan.

In exercising the powers to sell property, the related power to hire a professional for the exercise of the statutory sale power is 11 U.S.C. § 327.

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the net proceeds after payment of all secured claims will be no less than $154,078.48. Debtors will use the proceeds to pay secured and unsecured claims.

**Non-Disclosed Professional to Be Paid From Sales Proceeds**

The Motion, while requesting the sale of the Property, does not request authorization to pay a real estate broker/agent employed by Debtor. A review of the file discloses that no authorization to hire

such a professional has been sought from the court and no order authorizing such employment, as required for any compensation to be paid to the professional, such as a real estate broker/agent.

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.

Finally, 11 U.S.C. § 330 provides that for a professional hired pursuant to 11 U.S.C. § 327, the court may authorize payment of compensation. Federal Rule of Bankruptcy Procedure 2014 sets forth the basic procedure for a professional obtaining authorization to be employed.

Exhibit A is identified as the Purchase Agreement Documents. Dckt. 49. The first page is titled "Disclosure Regarding Real Estate Agency Relationship." In describing the duties of the Seller's Agent, the Debtor in this case being the Seller, it includes:

> A. The Seller's Agent has a "Fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with Seller."

The same fiduciary duties are stated to exist if the real estate professional represents a buyer.

It then states that there can be real estate agent who owes the respective fiduciary duties to both the seller and to the buyer in a real estate transaction.

On the Possible Representation of More than One Buyer or Seller page attached to the Purchase Agreement Documents, it states that Navigate Reality is representing the Seller, the Debtor, to who it owes fiduciary duties, and also the Buyer, to whom it has fiduciary duties. It then includes the statement:

> In the event of dual agency, seller and buyer agree that: a dual agent may not, without the express permission of the respective party, **disclose to the other party confidential information,** including, but not limited to, **facts relating to either the buyer's or seller's financial position, motivations, bargaining position, or other personal information that may impact price, including the seller's willingness to accept a price less than the listing price or the buyer's willingness to pay a price greater than** the price offered; and except as set forth above, a dual agent is obligated to disclose known facts materially affecting the value or desirability of the Property to both parties.

Exhibit A; Dckt. 49 at p. 7. (Identified as page number for the entire Exhibit Document, the individual pages for each exhibit not numbered.) (Emphasis added.) With this, it appears that the real estate

professional cannot engage in any meaningful professional representation, give negotiating strategy advice, or provide information about the other party, from whatever source the information is obtained.

For Debtor, it appears that the Debtor is the one left to undertake the negotiations and sale strategy.

It also needs to be noted that if the Chapter 13 plan should fail and the case is converted to one under Chapter 7, then all of the property of the bankruptcy estate from the Chapter 13 case is property of the Chapter 7 bankruptcy estate. The Chapter 13 debtor exercising the powers and fiduciary duties of a trustee and as the plan administrator under a confirmed Chapter 13 plan, must comply with the law in administering all of this property that is subject to the existing legal condition and interests of the bankruptcy estate in the Chapter 13 case and its potential successor if the case is converted to one under Chapter 7.

Here, Debtor is using Navigate Realty ("Broker") as the Seller and Buyer's Broker. Pursuant to the Purchase Agreement, Exhibit A, Dckt. 49, and not requested by Motion, Debtor will compensate Broker six (6) percent commission. The court notes, however, Debtor never sought court approval to employ Broker. Therefore, Debtor is in violation of 11 U.S.C. § 327 and § 328, as they were never approved to engage in the services of professionals.

The court will allow Debtor to file a Motion to Employ and Allow Compensation for the court to determine whether Debtor's Attorney can act as broker.

**Brokerage Potential Conflict of Interest**

The court also notes the third-party broker represents both the Seller and Buyer. Pursuant to 11 U.S.C. § 328(c), a professional may be denied employment if professional under § 327 is not a disinterested person, or represents or holds an adverse interest to the estate. Here, in seeking such employment, the professional is presented with conflict of interest with such the joint representation: as the broker/agent for the fiduciary in the bankruptcy case to sell the Property for the highest fair market value, while the buyer's broker's seeking to obtain the purchase for the lowest price possible - less than fair market value if possible. A buyer's broker, therefore, would have a clear adverse interest to the estate, which in violation of 11 U.S.C. § 328(c) both as to Seller's Broker.

Additionally, Debtor has not provided a conflict of interest waiver addressing the potential issue from the single Broker. However, even if provided, "[t]he requirement that a professional be 'disinterested' cannot be waived or circumvented by agreement or consent among creditors and the debtor. 3 Collier on Bankruptcy P 328.05 (16th 2022) (citing *In re Amdura Corp.*, 121 B.R. 862, 866 (Bankr. D. Colo. 1990) (stating provisions under 11 U.S.C. § 327 are not able to be limited by waiver. The professional must be disinterested and not hold an interest adverse to the estate.)).

The court leaves the question of whether the Broker is "disinterested" under 11 U.S.C. § 327(a) and § 328(c) to be determined at the hearing on the Motion to Employ and Allow Compensation. It is well established that a professional may have a conflict, but the court may determine that: (1) the conflict does not relate to the limited purpose for which the professional is to be hired, (2) the conflict does not impair, or create the appearance that it would impair, the professional to fulfill his or her fiduciary duty to the debtor/trustee and bankruptcy or plan estate, (3) the existence of the debtor/trustee's attorney in the case, who has his or her own fiduciary duties to the debtor/trustee and

bankruptcy or plan estate, provides sufficient oversight of the professional with a conflict, and (4) the employment of the professional for the limited purpose is in the best interests of the bankruptcy or plan estate.

Such ethical and legal issues are ironed out when the employment pursuant to 11 U.S.C. § 327 of the conflicted professional is sought from the court. Those issues have not been presented to the court.

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 to Sell Property filed by BARBAREE ANNETTE JERNIGAN and LANCE HUNTER LIGHTHALL, Chapter 13 Debtor, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that BARBAREE ANNETTE JERNIGAN and LANCE HUNTER LIGHTHALL, Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Stacie Pike or nominee ("Buyer"), the Property commonly known as 6470 Ridgeway Drive, Pollock Pines ("Property"), on the following terms:
>
> A. The Property shall be sold to Buyer for $350,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 49, and as further provided in this Order.
>
> B. The sale proceeds shall first be applied to closing costs, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.
>
> C. Chapter 13 Debtor is authorized to execute any and all documents reasonably necessary to effectuate the sale.
>
> D. Sales proceeds in the amount of six percent (6%) of the gross sales price of the Property disbursed directly from escrow to the Chapter 13 Trustee, to be held pending further order of this court to be applied to the six percent (6%) real estate commission to be paid to Navigate Realty if it is authorized to be employed by the Chapter 13 Debtor and in such amount for which compensation is authorized by this court as provided in 11 U.S.C. § 330. Navigate Reality is granted a perfected lien (no further act or filing required) by this Order on said six percent of the gross sales price disbursed directly to the Chapter 13 Trustee as provided herein.

E. All other net sales proceeds, after payment of the costs, expenses, and liens, and the six percent (6%) for the possible compensation for Navigate Reality, shall be disbursed directly from escrow to the Chapter 13 Trustee.

No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtor. Within fourteen days of the close of escrow, the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement.

**10. 19-21707-E-13 DEF-4** **TERRY DASNO** **David Foyil** **MOTION TO SELL** **4-29-22 [74]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13Trustee, and Office of the United States Trustee on May 9, 2022. By the court's calculation, 15 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice).

Under the facts and circumstances of this Motion, the court shortens the time to the 15 days given.

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

**The Motion to Sell Property is granted.**

TERRY ROBERT DASNO, Chapter 13 Debtor, ("Movant") proposes to sell the real property commonly known as 34 Westview Drive, Jackson, California ("Property").

The proposed purchaser of the Property is Tammie Boggs and Randal Gradd, and the terms of the sale are:

A. Purchase Price: $215,000.00

B. Close of Escrow: Sixty (60) days after acceptance

C. Initial Deposit: $2,500.00

D. Broker's Commission: Four (4) percent

1. Seller's Brokerage Firm: Gold Rush Realty Group

2. Seller's Agent: Janelle Louanne Foyil

3. Buyer's Brokerage Firm: Gold Rush Realty Group

4. Buyer's Agent: Janelle Louanne Foyil

**DISCUSSION**

The legal authority for the court authorizing the sale of property during the pendency of a bankruptcy case is found in 11 U.S.C. § 363. This authorizes the sale of property by a bankruptcy trustee. A Chapter 13 debtor may exercise that power in administering property during that bankruptcy case. 11 U.S.C. § 1303. Collier on Bankruptcy provides a discussion of the exercise of a bankruptcy trustee's power to sell property by a Chapter 13 debtor, including:

> Section 1303 grants the debtor, after notice and a hearing,1 the exclusive right in a chapter 13 case to use, sell or lease property of the estate,2 other than in the ordinary course of business under section 363(b). The chapter 13 trustee may not exercise3 the rights or powers conferred by section 363(b),4 although the chapter 13 trustee may use, sell or lease property of the estate pursuant to the terms of a confirmed plan or of the order confirming the plan.5

8 Collier on Bankruptcy P 1303.02 (16th 2022)

Local Bankruptcy Rule 3015-1(b)(1) provides that the Debtor in a Chapter 13 case may not transfer, sell, encumber, or otherwise dispose f any personal or real property with a value of $1,000, other than in the ordinary course of business, without court authorization. Local Bankruptcy Rule 3015-1(h)(D) addresses sale of property before the completion of the Chapter 13 plan.

In exercising the powers to sell property, the related power to hire a professional for the exercise of the statutory sale power is 11 U.S.C. § 327.

At the time of the hearing, the court announced the proposed sale and requested that all other

persons interested in submitting overbids present them in open court. At the hearing, the following overbids were presented in open court: xxxxxxxxxxxxxxx.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the Debtors will use the proceeds to pay all secured claims encumbering the property and the remaining to unsecured claims.

**Real Estate Broker and Professional Compensation**

The Motion, while requesting the sale of the Property, does not request authorization to pay a real estate broker/agent employed by Debtor. A review of the file discloses that no authorization to hire such a professional has been sought from the court and no order authorizing such employment, as required for any compensation to be paid to the professional, such as a real estate broker/agent.

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.

Finally, 11 U.S.C. § 330 provides that for a professional hired pursuant to 11 U.S.C. § 327, the court may authorize payment of compensation. Federal Rule of Bankruptcy Procedure 2014 sets forth the basic procedure for a professional obtaining authorization to be employed.

**Failure to Employ to Broker**

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.

Here, Debtor is using Gold Rush Realty Group ("Broker") as the Seller and Buyer's Broker. Purchase Agreement, Exhibit A, Dckt. 78. Additionally, the Seller and Buyer's Agent is listed as Janelle Louanne Foyil. *Id.* However, pursuant to the Conflict of Interest Notice and Waiver, attached as

Exhibit E (Dckt. 27), David Foyil, Debtor's Attorney, is participating as the real estate broker.

Pursuant to the Seller's Settlement Statement, and not requested by Motion, Debtor will compensate Broker four (4) percent commission. The court notes, however, Debtor never sought court approval to employ Debtor's Attorney as their broker. Debtor has not provided any legal authority as to why the employment of Debtor's Attorney can also act as their broker. Debtor is in violation of 11 U.S.C. § 327 and § 328, as they were never received approval for Debtor's Attorney to act as broker.

The court will allow Debtor to file a Motion to Employ and Allow Compensation for the court to determine whether Debtor's Attorney can act as broker.

**Purchase Agreement Information**
**Regarding Real Estate Broker/Agent**

In the Purchase Agreement it is stated that Gold Rush Realty Group ("Broker") as the Debtor Seller's and Buyer's Broker's. Purchase Agreement, Exhibit A, Dckt. 81. Additionally, the Seller and Buyer's Agent is listed as Janelle Louanne Foyil. *Id.*

Exhibit D is a California Department of Real Estate license statement which identifies David Foyil, Debtor's lawyer in this case, to be the licensed broker whose "DBA" is Gold Rush Reality Group. Dckt. 81 at 25. It further identifies Janelle Louanne Foyil as the "Salesperson" at Gold Rush Reality Group. *Id*.

A Conflict of Interest Notice and Waiver, Exhibit E (Dckt. 81), has been filed in support of the Motion to Sell. This is addressed to Debtor. The Document includes the following:

A. Debtor is a client of both David Foyil, Esq., bankruptcy attorney, and to be a client of David Foyil's real estate business.

B. David Foyil, real estate broker is to be paid a commission, which is separate and apart from monies due David Foyil, Esq., Debtor's bankruptcy attorney.

C. David Foyil states that it does not appear that David Foyil, Broker, and David Foyil, Esq. is not expected to have a conflict of interest.

D. However, a possible conflict could exist, and the Rules of Professional conduct require that such possible conflict must be disclosed. This letter is stated to provide Debtor with notice of possible conflicts of David Foyil, Broker, and David Foyil, Esq. bankruptcy attorney (both of which owe fiduciary duties to the bankruptcy/plan estate and Debtor as the fiduciary of the estate - not merely as Debtor individually).

E. David Foyil, Broker, and David Foyil, Esq., bankruptcy attorney for Debtor, must disclose the prohibition of an attorney entering into business transactions with a client, except when fully disclosed and the client consents to such business transactions.

F. David Foyil, Broker, and David Foyil, Esq., bankruptcy attorney, suggest that Debtor (not clearly identifying Debtor as the fiduciary to the bankruptcy/plan estate

or David Foyil, Esq. as bankruptcy attorney for Debtor and David Foyil, Broker, if hired, each having independent fiduciary duties to the bankruptcy/plan estate.

G. By agreeing to the waiver, Debtor waives any right to raise any conflict of interest.

H. It says that David Foyil, Esq., urges Debtor to obtain independent legal counsel concerning the sought waiver of rights. It is not clear whether the waiver is just as to Debtor personally, or as to Debtor the fiduciary of the bankruptcy/plan estate, and the fiduciary duties that David Foyil, Esq. and David Foyil, Broker, if authorized to be hired, owe to the bankruptcy/plan estate.

In addition to seeking an apparent waiver of the rights of the Debtor as the fiduciary of the bankruptcy/plan estate Gold Rush Realty Group, the DBA of David Foyil, Broker, and Janelle Louanne Foyil, the sales agent, also purport to be representing the Buyer, creating a conflicting fiduciary duty to the Buyer as against the Debtor, who is a fiduciary to the bankruptcy/plan estate in this case.

It also needs to be noted that if the Chapter 13 plan should fail and the case is converted to one under Chapter 7, then all of the property of the bankruptcy estate from the Chapter 13 case is property of the Chapter 7 bankruptcy estate. The Chapter 13 debtor exercising the powers and fiduciary duties of a trustee and as the plan administrator under a confirmed Chapter 13 plan, must comply with the law in administering all of this property that is subject to the existing legal condition and interests of the bankruptcy estate in the Chapter 13 case and its potential successor if the case is converted to one under Chapter 7.

**Brokerage Potential Conflict of Interest**

The court also notes Debtor's Attorney would represent both the Seller and Buyer. Pursuant to 11 U.S.C. § 328(c), a professional may be denied employment if professional under § 327 is not a disinterested person, or represents or holds an adverse interest to the estate. Here, there is a clear conflict with the joint representation: a seller's broker's goal is to receive for their client the highest fair price, while the buyer's broker's goal is to receive the lowest. A buyer's broker, therefore, would have a clear adverse interest to the estate, which in violation of 11 U.S.C. § 328(c) both as to Debtor's Attorney and Broker.

Debtor has provided a signed conflict of interest waiver addressing the potential issue from Debtor's Attorney acting as the single broker for Buyer and Seller. Debtor's Attorney references the California Rules of Responsibility, and advises their client to seek independent counsel. However, "[t]he requirement that a professional be 'disinterested' cannot be waived or circumvented by agreement or consent among creditors and the debtor. 3 Collier on Bankruptcy P 328.05 (16th 2022) (citing *In re Amdura Corp.*, 121 B.R. 862, 866 (Bankr. D. Colo. 1990) (stating provisions under 11 U.S.C. § 327 are not able to be limited by waiver. The attorney must be disinterested and not hold an interest adverse to the estate.)).

The court leaves the question of whether the Broker is "disinterested" under 11 U.S.C. § 327(a) and § 328(c) to be determined at the hearing on the Motion to Employ and Allow Compensation.

**Additional Conflict As**
**Counsel for Debtor**

Here, counsel for Debtor, which Debtor is exercising the powers of a trustee to sell property, has fiduciary duties as the plan administrator, and has fiduciary duties to the bankruptcy estate which is the contingent successor in interest of the Property, has a very important legal obligation which may not be allowed to be waived. As counsel for the Debtor he must advise the Debtor and then represent the Debtor concerning conduct of persons hired by the Debtor in performing duties and obligations arising under the plan and in the bankruptcy case. This includes other professionals hired by the Debtor.

Additionally, counsel for the Debtor also has to advise the Debtor as to claims and rights against other persons which he/she does business with enters into contracts with (such as a contract to sell real property), and provide legal representation for Debtor, as the fiduciary of the bankruptcy/plan estate, to protect the rights and interests of the bankruptcy/plan estate.

Here, David Foyil, Esq., has an obligation to advise the Debtor concerning rights concerning the conduct of David Foyil, Broker, and his real estate business, as well as against the Buyer. The court has not authorized the Debtor to give up those rights and duties of David Foyil, Esq., attorney for Debtor in this bankruptcy 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 to Sell Property filed by TERRY ROBERT DASNO, Chapter 13 Debtor, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that TERRY ROBERT DASNO, Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Tammie Boggs and Randal Gradd or nominee ("Buyer"), the Property commonly known as 34 Westview Drive, Jackson ("Property"), on the following terms:
>
> A. The Property shall be sold to Buyer for $215,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 81, and as further provided in this Order.
>
> B. The sale proceeds shall first be applied to closing costs,, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.
>
> C. Chapter 13 Debtor is authorized to execute any and all documents reasonably necessary to effectuate the sale.

D. Sales proceeds in the amount of four percent (4%) of the gross sales price of the Property disbursed directly from escrow to the Chapter 13 Trustee, to be held pending further order of this court to be applied to the four percent (4%) real estate commission to be paid to David Foyil, Broker and Gold Rush Realty Group if it is authorized to be employed by the Chapter 13 Debtor and in such amount for which compensation is authorized by this court as provided in 11 U.S.C. § 330. David Foyil, Broker and Gold Rush Realty Group is granted a perfected lien (no further act or filing required) by this Order on said six percent of the gross sales price disbursed directly to the Chapter 13 Trustee as provided herein.

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

Debtor's homestead exemption in the net proceeds of the sale of the Property disbursed to the Chapter 13 Trustee, subject only to the lien granted David Foyil, Broker and Gold Rush Realty Group for a possible real estate commission, attaches to and continues in full force and effect is said net proceeds to the same extent, amount, and validity it existed in the Property sold.

# FINAL RULINGS

| | | | |
|---|---|---|---|
| **11.** | **18-21627-E-13**<br>**TLA-2** | **JAMES/KIMBERLY STETLER**<br>**Thomas Amberg** | **MOTION TO MODIFY PLAN**<br>**4-14-22 [36]** |

**Final Ruling:** No appearance at the May 24, 2022 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 Debtor, Debtor's Attorney, and Chapter 13 Trustee on April 14, 2022. By the court's calculation, 40 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, James Arlen Stetler and Kimberly Jay Stetler ("Debtor"), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on May 10, 2022. Dckt. 43. 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, James Arlen Stetler and Kimberly Jay Stetler ("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 April 14, 2022, 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.

**12. 17-28343-E-13 CLH-4** | **SHAWN BARTLETT** **Cindy Lee Hill** | **MOTION FOR COMPENSATION BY THE LAW OFFICE OF HILL & MORRIS FOR CINDY LEE HILL, DEBTORS ATTORNEY(S)** **4-26-22 [62]**

**Final Ruling:** No appearance at the May 24, 2022 hearing is required.
**----------**

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 26, 2022. By the court's calculation, 28 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

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

Hill & Morris, the Attorney ("Applicant") for Shawn Glenn Bartlett, the Chapter 13 Debtor ("Client"), makes a First Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period May 28, 2019 through January 1, 2020. Applicant requests fees in the amount of $5,325.00 and costs in the amount of $160.15.

**Trustee's Nonopposition**

Chapter 13 Trustee David Cusick filed a nonopposition on May 9, 2022 stating the services were needed and reasonable. Dckt. 67.

**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 filing and litigating a motion to borrow funds to purchase a residence and motion to approve first amended plan. The court finds the services were beneficial to Client and the Estate and were reasonable.

**FEES AND COSTS & EXPENSES REQUESTED**

**Fees**

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

Initial Meeting and Substitution: Applicant spent 4.3 hours in this category. Applicant corresponded with the clients and drafted documents as needed.

Motion to Borrow Funds: Applicant spent 7.9 hours in this category. Applicant prepared and litigated the Motion and corresponded with the client and Trustee's office.

Motion to Purchase a Residence: Applicant spent 6.6 hours in this category. Applicant prepared and litigated the Motion and corresponded with the client and Trustee.

Although Applicant spent 18.8 hours in total, Applicant is reducing their fees and only charging for 14.2 hours.

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** |
|---|---|---|---|
| Cindy Lee Hill, Attorney | 14.2 | $375.00 | $5,325.00 |
| **Total Fees for Period of Application** | | | $5,325.00 |

**Costs & Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $160.15 pursuant to this application.

The costs requested in this Application are,

| **Description of Cost** | **Cost** |
|---|---|
| Copy | $92.80 |
| Postage | $67.35 |
| **Total Costs Requested in Application** | $160.15 |

**FEES AND COSTS & EXPENSES ALLOWED**

**Fees**

**Hourly Fees**

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First Fees in the amount of $5,325.00 are approved pursuant to 11 U.S.C. § 331, and subject to final review pursuant to 11 U.S.C. § 330, and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case.

**Costs & Expenses**

First Costs in the amount of $160.15 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case.

The court authorizes the Chapter 13 Trustee to pay 100% of the fees and 100% of the 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 | $5,325.00 |
| Costs and Expenses | $160.15 |

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Hill & Morris, the Attorney ("Applicant") for Shawn Glenn Bartlett, 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 Hill & Morris is allowed the following fees and expenses as a professional of the Estate:
>
> Hill & Morris, Professional employed by Chapter 13 Debtor
>
> Fees in the amount of $5,325.00
> Expenses in the amount of $160.15,
>
> as an interim allowance of fees and expenses pursuant to 11 U.S.C. § 331 and subject to final review and allowance pursuant to 11 U.S.C. § 330.
>
> **IT IS FURTHER ORDERED** that the Chapter 13 Trustee is authorized to pay 100% of the fees and 100% of the costs allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case.

**13.** **22-20157-E-13 PGM-1** | **NELSON MADSEN/ SHARON BURNS** **Peter Macaluso** | **MOTION TO CONFIRM PLAN 4-18-22 [63]**

**Final Ruling:** No appearance at the May 24, 2022 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 Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 18, 2022. By the court's calculation, 36 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 Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion to Confirm the Amended Plan is granted.**

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Nelson A Madsen and Sharon L Burns ("Debtor") has provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on May 2, 2022. Dckt. 77. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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 to Confirm the Amended Chapter 13 Plan filed by the debtor, Nelson A Madsen and Sharon L Burns ("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 Amended Chapter 13 Plan filed on April 18, 2022, 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.

**14. 22-20066-E-13 DPC-1 — BONNIE PYEATT — Michael Hays — CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK — 3-8-22 [31]**

**Final Ruling: No appearance at the May 24, 2022 Hearing is required.**
---

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on March 8, 2022. By the court's calculation, 36 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. Opposition was presented at the hearing.

**The Objection to Confirmation is overruled.**

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

A. Debtor filed a superseding Plan without serving the document on interested parties and filing a Motion to Confirm Plan.

**DEBTOR'S RESPONSE**

Debtor filed a Response to Trustee's Objection to Confirmation on March 25, 2022. Dckt. 37. In the Response, Debtor represents as follows:

1. Counsel approached the filing of the documents in a manner consistent with past information they received from Kristen Koo that separate noticing and a motion to confirm was not necessary because the plans were identical.

2. Counsel thought it would be better practice to file a Notice of Withdrawal. After the Notice and subsequent Plan were filed, Counsel contacted the Trustee to request that the document be served when they noticed the case. The Trustee informed Counsel that he was obligated to serve the first plan which they did on February 7, 2022. Dckt. 23 and 24.

3. Counsel mailed Santander Consumer USA Inc. a copy of the Debtor's Notice to Santander Consumer USA Inc. and the attachments, Dckt. 28 and 29, informing the company of the accident and providing the insurance company information. Counsel additionally provided copies of the Notice of Meeting of Creditors and the subsequent Plan.

4. Counsel requests that the Plan be confirmed as the two plans are identical except for treatment of Santander in Class 3 and the amount of projected unsecured creditors at 3.14.

**DISCUSSION**

Trustee's objection is well-taken. As done by Debtor's counsel, it appears that there is an "amended" Plan filed, and for such an amended plan a separate motion to confirm plan would be required.

What Debtor's counsel states is that he was attempting to correct a "simple" clerical error in which he failed to list the secured claim of Santander Consumer USA, Inc. as a Class 3 surrender of the collateral (the vehicle) so that creditor could exercise its lien rights in the collateral.

While Debtor had no ability to "withdraw" the original plan filed, the clerical error could have been addressed in an objection proceeding. The "correction" does not alter the rights of other creditors of the Plan.

At the hearing, the court determined with a process to use this objection for consideration of the Corrected Plan was proper. The hearing is continued to allow Debtor to serve the Corrected Plan on creditors, provide notice of continued hearing, and provide creditors with an opportunity to file opposition to confirmation in this Contested Matter.

**Chapter 13 Trustee's Reply**

On May 2, 2022, Trustee filed a reply stating Debtor is current on all payments and Debtor served a notice of continued hearing and corrected plan on all parties.

Trustee no longer "seeks to pursue his objection," but advises the court that the court may want to consider if it will confirm the second plan filed based on Trustee's Objection to Confirmation.

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 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 is overruled, and BONNIE SUE PYEATT's ("Debtor") Chapter 13 Plan filed on January 27, 2022, 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.

**15.** **19-27787-E-13** **JULIANA WILLIAMS** **MOTION TO MODIFY PLAN**
**MRL-2** **Mikalah Liviakis** **4-6-22 [25]**

**Final Ruling:** No appearance at the May 24, 2022 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 Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 6, 2022. By the court's calculation, 48 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, Juliana Marie Williams ("Debtor"), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on May 10, 2022. Dckt. 31. 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, Juliana Marie Williams ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on April 6, 2022, 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.