

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

Honorable Christopher D. Jaime
1200 I Street, Suite 200
Modesto, California

PRE-HEARING DISPOSITIONS COVER SHEET

DAY: TUESDAY

DATE: July 20, 2021

CALENDAR: 1:00 P.M. CHAPTER 13

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

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

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

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

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

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Modesto, California

July 20, 2021 at 1:00 p.m.

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1. [17-90818](#)-B-13 LISA GARCIA MOTION TO MODIFY PLAN
[MSN](#)-1 Mark S. Nelson 6-8-21 [[119](#)]
Thru #2

CONTINUED TO 8/10/2021 AT 1:00 P.M. TO PROVIDE THE INTERNAL REVENUE SERVICE
ADDITIONAL TIME TO FILE AN AMENDED PROOF OF CLAIM.

Final Ruling

No appearance at the July 20, 2021, hearing is required. The court will issue a minute
order.

2. [17-90818](#)-B-13 LISA GARCIA MOTION FOR COMPENSATION BY THE
[MSN](#)-2 Mark S. Nelson LAW OFFICE OF MARK S. NELSON
FOR MARK S. NELSON, DEBTORS
ATTORNEY(S)
6-8-21 [[125](#)]

Final Ruling

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

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

Fees and Costs Requested

Mark Nelson ("Movant"), the attorney to Chapter 13 Debtor, makes a request for the
allowance of \$1,000.00 in fees to be paid through the plan. This is a reduction from
\$1,087.50 in fees for services provided. Debtor was originally represented by attorney
Randall K. Walton, who received full payment of \$4,000.00, with \$900.00 paid prior to
the filing of the case and \$3,100.00 paid through the Debtor's plan. Movant's office
substituted into the case on March 17, 2021, with no money paid directly to it. The
billing rate in this case was \$275.00 per hour for Movant and \$125.00 per hour for a
paralegal.

¹The absence of an opposition does not mean that a motion will
automatically be granted. *Rivas-Almendarez v. Holder*, 362 Fed. Appx. 606 (9th
Cir. 2010). Even an unopposed motion must have merit and there must be a
basis for the court to grant the relief requested. See generally, *In re*
Bassett, 2019 WL 993302 at *5 (Bankr. E.D. Cal. Feb. 26, 2019).

July 20, 2021 at 1:00 p.m.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a trustee, examiner or professional person employed under § 327 or § 1103 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

Here, the services included: (1) reviewing the original petition, (2) reviewing notice of filed claims, (3) meeting with client regarding plan modification, (4) preparing a modified plan, (5) preparing a motion for additional attorney's fees, (6) reviewing the modified plan, motion to modify plan, and motion for additional attorney's fees, (7) meeting with client to review the modified plan, and (8) filing the relevant documents. Dkt. 129, exh. A.

The court finds problematic the services rendered by Movant's office. It appears that Movant's paralegal may have engaged in the unauthorized practice of law. Paralegals are not lawyers. As a matter of law, paralegal "petition preparers" are only authorized to prepare bankruptcy documents based on information provided by the debtors. *In re Morris*, 2010 Bankr. LEXIS 648411 (Bankr. E.D. Cal. 2010). The services of bankruptcy petition preparers are strictly limited to typing bankruptcy forms. *Frankfort Dig. Servs. v. Kistler (In re Reynoso)*, 477 F.3d 1117, 1125 (9th Cir. 2007). While Movant's paralegal may type modifications to the plan that was subsequently reviewed by Movant, the court questions the parameters of the paralegal's 3.5 hours spent "meeting" with the Debtor to discuss the plan modification. In fact, based on the Professional Services Invoice filed as Exhibit A, at no time did Movant himself ever meet with the client. Perhaps even more troubling is Movant's declaration (signed and filed under penalty of perjury) which states that Movant's "services rendered to the debtor in connection with this Chapter 13 case since [his] office substituted into the case include . . . personal meeting" when that plainly is not the case according to Exhibit A.²

For the foregoing reasons, the motion for additional compensation is denied without prejudice.

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

The court will issue an order.

²The court also notes this case is an opt-in "no look" fee case governed by Local Bankr. R. 2016-1(c). See Dkts. 95, 109, 110. There is no discussion or evidence which demonstrates how, if at all, the services for which compensation is requested are substantial and unanticipated. See Local Bankr. R. 2016-1(c)(3).

Final Ruling

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

The court's decision is to conditionally grant the motion to sell.

The Bankruptcy Code permits Chapter 13 debtors to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303. Debtors Nicholas Dent and Jenni Dent ("Debtors") propose to sell the property described as 1708 Nutshell Court, Hughson, California ("Property").

Proposed purchaser Ben Taylor has agreed to purchase the Property for \$527,000.00. Dkt. 79, p. 14. The Debtors will turn over net proceeds from the sale of the Property to the Trustee in the amount of \$115,000.00 or the amount necessary to pay off the plan. Debtors are selling their home because they will be moving to Tennessee.

A conditional non-opposition was filed by creditor U.S. Bank Trust National Association as Trustee of the Cabana Series IV Trust ("Creditor") stating that it is agreeable to the sale of the Property provided that it is paid in full pursuant to the payoff quote provided by Creditor or Creditor otherwise agrees in writing.

Additionally, the Chapter 13 Trustee filed an opposition stating that the Debtors failed to file an estimated closing statement, which the Trustee requests in order to evaluate the impact of the sale on Debtors' plan. The Trustee separately requests that any order granting the motion include additional language, specifically that unsecured creditors will be paid 100% and the Trustee's standard language.

Based on the evidence before the court, the court agrees with the Creditor and Trustee that there are pending issues that must be resolved. Provided that the Debtors submit to the Trustee an estimated closing statement and there are no issues preventing the payoff of the plan, Debtors' motion to sell shall be granted.

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

Debtors' attorney shall submit an order stating unsecured creditors will be paid 100% and consistent with the Trustee's standard sale order. The order shall be approved by the Trustee.

Final Ruling

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

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

The Bankruptcy Code permits Chapter 13 debtors to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303. Debtors Edward Wickman and Karen Wickman ("Debtors") propose to sell the property described as 18262 Golden Oaks Drive, Jamestown, California ("Property"). Debtors state that they are representing themselves pro se and that attorney Michael Germain is no longer their counsel of record.

The Chapter 13 Trustee filed an opposition stating that it is unclear what Debtors will do with the sale proceeds, an estimated closing statement was not properly completed since it does not list the liens against the Property, and no sale contract has been provided. The Trustee separately requests that any order granting the motion include additional language, specifically that unsecured creditors will be paid 100% and the Trustee's standard language.

Based on the evidence before the court, the court agrees with the Trustee that there are issues with the Debtors motion to sell. First, Debtors utilize a form from the Central District of California that is not authorized in the Eastern District of California. Second, the Estimated Seller Proceeds filed as docket 154, exhibit B/C does not list the lien holders against the Property. Third, there is no pending sale contract with any identifiable buyer; Debtors merely state that they "will not accept an offer under \$450,000.00 for their home." Dkt. 160, para. 3. Therefore, until there is a sale contract with an identifiable buyer, the Debtors' motion is premature.

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

The court will issue an order.

Final Ruling

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

The court's decision is to value the secured claim of Chrysler Capital at \$3,933.00.

Debtors move to value the secured claim of Chrysler Capital ("Creditor"). Debtor is the owner of a 2005 Ford Mustang ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of \$3,933.00 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).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. Claim No. 4-1 filed by Chrysler Capital is the claim which may be the subject of the present motion.

Discussion

The lien on the Vehicle's title secures a purchase-money loan incurred on August 29, 2013, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$11,702.57. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of \$3,933.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

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

The court will issue an order.

6. [20-90466](#)-B-13 LOUIE DOMINGUEZ
[MSN](#)-1 Mark S. Nelson

MOTION TO MODIFY PLAN
6-9-21 [[20](#)]

Final Ruling

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

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

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

The motion is ORDERED GRANTED for reasons stated in the minutes. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will issue an order.

7. [19-90168](#)-B-13 DAVID/ESPERANZA HARRIS MOTION TO MODIFY PLAN
[DCJ](#)-1 David C. Johnston 6-2-21 [[23](#)]

Final Ruling

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

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

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

The motion is ORDERED GRANTED for reasons stated in the minutes. Counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will issue an order.

8. [18-90689](#)-B-13 AUDREY MCGILL
[DCJ](#)-1 David C. Johnston

MOTION TO MODIFY PLAN
6-2-21 [[37](#)]

Final Ruling

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

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

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

The motion is ORDERED GRANTED for reasons stated in the minutes. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will issue an order.