

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Christopher M. Klein

Bankruptcy Judge

Sacramento, California

**October 12, 2021 at 2:00 p.m.**

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1.	<a href="#">19-21508</a> -C-13	JESSICA THOENE	MOTION TO INCUR DEBT
	<a href="#">RWF</a> -3	Robert Fong	9-14-21 [ <a href="#">57</a> ]

**Final Ruling:** No appearance at the October 12, 2021 hearing is required.  
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The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 28 days' notice was provided. Dkt. 62.

No opposition has been filed. Therefore, the court enters the defaults of the non-responding parties in interest, finds there are no disputed material factual issues, and determines the matter will be resolved without oral argument. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995); *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006).

<p><b>The Motion to Incur Debt is granted.</b></p>
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The debtor, Jessica Thoene, filed this Motion seeking authority to incur postpetition debt, a refinancing of the debtor's residence located at 5230 Maui Way, Fair Oaks, California.

The loan would be in the principal amount of \$305,250.00, paid at 2.750 percent interest over 30 years. Under the new loan, the debtor's monthly payment will be \$1,246.16 per month, where is previously was \$2,267.99 per month.

The debtor represents all claims in this case can be paid in full with loan funds.

The trustee initially filed an Opposition requesting a closing statement to show claims in this case can be paid in full, and requesting certain language be added to any order granting the Motion. Dkt. 70.

But, after the debtor filed a Reply representing a closing statement has been provided and agreeing to the language be added to any order granting the Motion (Dkt. 73), the trustee withdrew its opposition. Dkt. 77.

**October 12, 2021 at 2:00 p.m.**

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the Motion is granted.

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

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

The Motion to Incur Debt filed by Jessica Rachel Thoene 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. The debtor's counsel shall prepare an appropriate order granting the Motion, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved submit the proposed order to the court.

2. [21-22810](#)-C-13 EFRAIN RODRIGUEZ  
[DWE](#)-1 Steele Lanphier

OBJECTION TO CONFIRMATION OF  
PLAN BY FREEDOM MORTGAGE  
CORPORATION  
9-22-21 [[24](#)]

**Final Ruling:** No appearance at the October 12, 2021 hearing is required.  
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Freedom Mortgage Corporation having filed a withdrawal of its  
Objection on October 8, 2021 (Dkt. 30), pursuant to Federal Rule of Civil  
Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and  
7041, the Objection to Confirmation was dismissed without prejudice, the  
matter is removed from the calendar.

**Final Ruling:** No appearance at the October 12, 2021 hearing is required.  
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The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 20 days' notice was provided. Dkt. 19.

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

**The hearing on the Objection is continued to October 26, 2021 at 1:30 p.m.**

The Chapter 13 Trustee, Russell Greer ("Trustee"), opposes confirmation of the Chapter 13 plan on the basis that:

1. The debtor has not provided his 2020 tax returns.
2. The debtor has not provided all required pay advices.
3. The 341 Meeting of Creditors has not yet been concluded.
4. Trustee has objected to debtor's exemptions, which Objection is set for hearing October 26, 2021. If the trustee's Objection is sustained, the debtor's plan does not meet the liquidation test of 11 U.S.C. § 1325(a)(4).

#### **DISCUSSION**

A review of the docket shows the 341 Meeting was further continued to October 14, 2021.

The court shall continue the hearing on this Objection to October 26, 2021 at 1:30 p.m. to be heard alongside the Trustee's Objection to Debtor's Claim of Exemptions. This continuance will also allow the debtor to provide all documents required by 11 U.S.C. § 521, and to attend the continued 341 Meeting.

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

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

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, Russell Greer, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the hearing on the Objection is continued to October 26, 2021 at 1:30 p.m.

**Final Ruling:** No appearance at the October 12, 2021 hearing is required.  
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The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 39 days' notice was provided. Dkt. 140.

No opposition has been filed. Therefore, the court enters the defaults of the non-responding parties in interest, finds there are no disputed material factual issues, and determines the matter will be resolved without oral argument. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995); *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006).

**The Motion to Modify is granted.**

The debtors filed this Motion seeking to modify the terms of the confirmed plan pursuant to 11 U.S.C. § 1329.

No opposition to the Motion has been filed.

Upon review of the record, the court finds the plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329. The Motion is granted, and the plan is confirmed.

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

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

The Motion to Modify Plan filed by the debtors, Brett Wood Hutchens and Susan Evette Hutchens, 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, the debtor's Modified Chapter 13 Plan (Dkt. 137) meets the requirements of 11 U.S.C. §§ 1322, 1325(a), and 1329, and the plan is confirmed. Debtor's counsel 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 trustee will submit the proposed order to the court.

5. [19-20066](#)-C-13 HELEN WAYNE  
[CYB](#)-3 Candace Brooks

MOTION FOR COMPENSATION FOR  
CANDACE Y. BROOKS, DEBTORS  
ATTORNEY(S)  
9-21-21 [[37](#)]

**No Tentative Ruling:**

The Motion has been set on Local Rule 9014-1(f)(2) notice which requires 21 days' notice. The Proof of Service shows that 21 days' notice was provided. Dkt. 42.

**The Motion for Allowance of Professional Fees is ~~xxxxxx~~.**

Candace Y. Brooks, counsel("Applicant") for the debtor Helen Elizabeth Wayne, filed this Motion seeking approval of additional fees, beyond the flat fee, for substantial and unanticipated work performed post-confirmation.

The Motion explains the additional fees all relate to the debtor's need to purchase a new vehicle, which arose after plan confirmation. The services included significant communications with the debtor, preparation and prosecution of a motion to incur debt, preparation and prosecution of a motion to sell the debtor's old vehicle, and preparation and filing of supplemental schedules.

Exhibit A filed by counsel is an itemized billing statement. Dkt. 40.

Fees are requested for the period September 13, 2019, through September 8, 2021. The requested fees total \$4,230.00.

**TRUSTEE'S OPPOSITION**

The Trustee filed an Opposition on October 4, 2021. Dkt. 43. The trustee argues that if the Motion is granted, the 36-month plan will be rendered infeasible, with the proposed fees taking 20 months longer to pay off.

The trustee also notes no declaration of the debtor was filed in support of the Motion.

**FEES AND COSTS & EXPENSES ALLOWED**

At the hearing, ~~xxxxxxxxxxxxxxxx~~

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 Candace Y. Brooks ("Applicant"), Attorney having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is ~~xxxxxxxxxxxxxx~~