

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

November 23, 2021 at 2:00 p.m.

1.	<u>21-20109-E-13</u> <u>RPH-3</u>	LARRY/DEBRA JACKSON Robert Huckaby	CONTINUED OBJECTION TO CLAIM OF INTERNAL REVENUE SERVICE, CLAIM NUMBER 9-1 8-18-21 <u>[90]</u>
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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.

Local Rule 3007-1 Objection to Claim—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor, Debtor's Attorney, and Chapter 13 Trustee on August 18, 2021. By the court's calculation, 55 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(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 Objection to Proof of Claim Number 9-1 of Internal Revenue Service is XXXX

Larry John Jackson and Debra Ann Jackson, Chapter 13 Debtors ("Objectors") requests that the court disallow the claim of Internal Revenue Service ("Creditor"), Proof of Claim No. 9-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be priority unsecured in the amount of \$54,439.42 and \$29.00 in arrears. Objector asserts that the amount claimed is in error because it duplicates the Civil Penalty against each of the debtors, therefore the actual amount owed by the joint debtors herein is one-half of the total amount claimed. Furthermore, Debtor claims that the payment

should be made secured, and have filed for them accordingly.

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial evidence 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). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *In re Austin*, 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

Once a party has objected to a proof of claim, the creditor asserting the claim may not withdraw the claim except on order of the court. FED. R. BANKR. P. 3006.

Debtors seeks to put forth an objection on the ground that the unsecured priority claim—for Civil Penalties for failure to remit payroll taxes—from the IRS asserts a claim against each debtor individually, erroneously doubling the value of the IRS' claim against Debtors. Dckt. 90. Debtors argue that the claim should only be asserted once, as a singular joint claim against both debtors, halving the value asserted. Finally, Creditor already has a Class 2A claim with a lien against their real property at 1847 Hekpa Drive, South Lake Tahoe, El Dorado County ("Real Property"). Debtor has filed a secured claim on September 17, 2021 for the Creditor of the \$54,439.42 and \$29.00 in arrears, with the language that the secured claim is only to be collected once. Claim #9-2. For these reasons, Debtor's object to the claim.

Creditor agrees with Debtor's argument that the debt should be made secured, and that the previously unsecured claim should be made secured as per the September 17, 2021 claim. Dckt. 97. Creditor agrees with Debtors reasoning, but Creditor seeks to deny Debtors' objection because it is moot due to the filing of Claim 9-2 correcting the issues presented in Debtors' motion to object.

Trustee has filed a non-opposition to Debtor's objection, and agrees with their reasoning. Dckt. 99.

Amended Proof of Claim 9-2

On September 17, 2021, Creditor filed Amended Proof of Claim 9-2. The claim asserted in Amended Proof of Claim 9-2 is:

- A. The amount of the claim is stated to be \$54,468.42. This is comprised of the following civil penalties:
 - 1. \$29.00 for the tax period September 30, 2018;
 - 2. \$4,501.47 for the tax period December 31, 2018;

3. \$4,501.47 for the tax period December 31, 2018;
4. \$6,508.20 for the tax period March 31, 2019;
5. \$6,508.20 for the tax period March 31, 2019;
6. \$7,626.65 for the tax period June 30, 2019;
7. \$7,626.65 for the tax period June 30, 2019;
8. \$7,937.39 for the tax period September 30, 2019;
9. \$7,937.39 for the tax period September 30, 2019;
10. \$1,292.00 for Interest on the Tax Penalties.

B. Copies of Lien Notices filed with the El Dorado County Recorder are attached, one for each of the two debtors.

Debtor asserts that the Proof of Claim amount is overstated, as one tax penalty is owed by both of the debtors. The \$54,439.42 doubles the obligation.

Creditor responds, asserting that contention is incorrect. However, the explanation by Creditor confuses the court:

The correct amount of the secured claim is \$54,468.42. The claim is for Trust Fund Recovery Penalties against both Debtors, but should only be collected once.

IRS will amend the proof of claim to include the correct amount with the following language: "TFRP assessed against both debtors, but to be collected only once."

Opposition, p. 2:15-19; Dckt. 97. No Declaration is provided explaining the correct computation of this amount. While stating that the \$54,468.42 is the "correct amount," the Opposition then states that the penalties are imposed against both debtors, but is to be collected only once.

Looking at the penalties assessed in the Attachment to Amended Proof of Claim 9-2, it appears that duplicate penalties were assessed, but "only to be collected once," it appears that the \$54,468.42 states duplicate amounts.

At the hearing, counsel for the Internal Revenue Service provided Debtor's counsel with a contact at the Service to address the claim computation issues and whether debt owed by the corporation could be asserted as a claim in this case.

The court also addressed with the parties the need to confirm whether one \$27,234.21 penalty is jointly and several liability of the two Debtors, or whether there are two debts owed for a total of \$54,468.42.

November 23 Hearing

At the hearing, XXXXXXXXXXXX

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 Claim of Internal Revenue Service (“Creditor”), filed in this case by Larry John Jackson and Debra Ann Jackson, Chapter 13 Debtor (“Objectors”) 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 Proof of Claim Number 9-1 of Internal Revenue Service is **XXXXX**.

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.

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, parties requesting special notice, and Office of the United States Trustee on October 19, 2021. By the court’s calculation, 35 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Confirm the Modified Plan is denied.

The debtors, Paul Wilson and Jessica Lucia Mainvoille-Wilson (“Debtor”) seeks confirmation of the Modified Plan because Jessica Lucia Mainvoille-Wilson lost her job at the beginning of the Pandemic and was diagnosed with cancer, but she has now become employed with the State of California and believes she can make an increased modified payment started November 25, 2021. Declaration, Dckt. 102. The Modified Plan provides \$2,624.00 to be paid through the remainder of the plan after October 2021. Modified Plan, Dckt. 104. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on November 9, 2021. Dckt. 109. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor may not have the ability to make plan payments

DISCUSSION

Inability to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor has not filed a supplemental Schedules I and J in connection with this motion, and the most recent Supplemental Schedules I and J were filed on November 17, 2020 (Dckt. 78). This motion hinges on the Debtor's supposed increase in income, and without documentation to verify said increase, Debtor's ability to afford the plan is put into question. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

The Modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 and 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 Motion to Confirm the Modified Chapter 13 Plan filed by the debtors, Paul Wilson and Jessica Lucia Mainvoille-Wilson ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Modified Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

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, creditors, parties requesting special notice, and Office of the United States Trustee on November 9, 2021. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Dismiss 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 Dismiss is granted, and the case is dismissed.

The debtor, Jenna Rae Hedges ("Debtor"), seeks dismissal of the case on the basis that:

1. Debtor has separated from her husband, and finds that it is in the best interest of all parties, including creditors, to dismiss the current Chapter 13 plan

TRUSTEE'S NONOPPOSITION

On November 16, 2021, Trustee David Cusick ("Trustee") filed a nonopposition to Debtor's Motion to Dismiss. Dckt. 33. Trustee notes according to Debtor's amended Schedule I filed June 3, 2021, Debtor is no longer receiving spouse's income and the support received is from her former partner. Additionally, she has moved in with her mother.

DISCUSSION

11 U.S.C. § 1307(b)

Pursuant to 11 U.S.C. § 1307(b), Debtor has an absolute right to voluntarily dismiss a Chapter 13 case, so long as the case has not been converted under section 706, 1112, or 1208.

Debtor notes this case has not been converted, and Debtor seeks to enforce this Dismissal due to the separation of Debtor to her husband making it difficult to make chapter 13 payments

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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 Dismiss the Chapter 13 case filed by the debtor, Jenna Rae Hedges (“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 Dismiss is granted, and the case is dismissed.

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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 11, 2021. By the court's calculation, 62 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 Plan has been set for hearing on the notice required by Local Bankruptcy Rules 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). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p>The Motion to Confirm the Plan is XXXXX.</p>

The debtor, Marlon San Antonio Valenzuela and Michelle Gumobao Valenzuela ("Debtor") seeks confirmation of the Chapter 13 Plan. The Plan provides that the Debtors are able to afford their ongoing expenses in addition to their Plan payment. Plan, Dckt. 65. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee") filed an Opposition on September 15, 2021. Dckt. 67. Trustee opposes confirmation of the Plan on the basis that:

A. Failure to provide 521 documents.

DISCUSSION

Failure to Provide Pay Stubs & Tax Returns

Debtor has not provided the Chapter 13 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, the Chapter 13 Trustee argues that 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).

The Trustee agreed to a continuance to allow for review of the documents which counsel for Debtor states have been transmitted to the Trustee.

TRUSTEE'S STATUS REPORT

On November 16, 2021, Trustee filed a Status Report on Debtor's Motion to Confirm. Dckt. 81. Trustee states they notified Debtor's attorney by email that they needed to send documents by transferring them to the 13 Documents website. Trustee still has not received copies of employer payment advices for both Debtors for the sixty (60) days prior to that date as well as a copy of both Debtor's 2019 federal tax returns.

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 Chapter 13 Plan filed by the debtor, Marlon San Antonio Valenzuela and Michelle Gumobao Valenzuela ("Debtor"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Confirm the Plan is **xxxxxx**.

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, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 2, 2021. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice).

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, -----

<p>The Motion to Sell Property is XXXXXXX.</p>

The Bankruptcy Code permits Toni Hendricks Painter, Chapter 13 Debtor, ("Movant") to sell property of the estate or under the confirmed plan after a noticed hearing. 11 U.S.C. §§ 363 and 1303.

The notice states the property to be sold is 2157 Clearview Circle, Benecia, CA 94510. Notice, Dckt. 48. However, the Motion and Exhibits state the real property to be sold is 317 Riverwood Lane, Rio Vista, California 94571 ("Property"). Motion, Dckt. 47; Exhibit A, Dckt. 50.

There is evidence to support a conclusion that the real property to be sold is the Rio Vista address as Exhibit A is a purchase agreement for the Rio Vista address. Exhibit A, Dckt. 50. It appears to the court that the Notice to creditors stating the Benecia address is a clerical error.

At the hearing, XXXXXXX

The proposed purchaser of the Property is Maria Palazzolo, and the terms of the sale are:

- A. Purchase Price - \$425,000.00
- B. Loan Payoff to Freedom Mortgage - \$339,932.70
- C. Broker's 5.0% Commission - \$21,250.00
- D. Signing/Notary Services - \$175.00
- E. Real Estate Taxes to Solano County - \$2,285.73
- F. HOA Fees - \$1,255.00
- G. Escrow Fees to Old Title Republic Co. - \$490.00
- H. Additional charges - \$45.00
- I. Title Charges - \$714.00
- J. Recording Fees - \$225.00
- K. County transfer tax to Solano county - \$233.75
- L. Initial deposit - \$5,000.00
- M. Loan - \$175,000.00
- N. Balance of Down Payment or Purchase Price - \$245,000.00
- O. The Debtor will keep \$40,000.00 of the net proceeds with the intention of using it as a down payment on a new home. Authorize the Chapter 13 Trustee to submit a demand upon escrow for all remaining net proceeds after \$40,000.00 is disbursed to the Debtor. The remaining net proceeds will be considered a lump sum payment in addition to Debtor's regular monthly payment.
- P. Authorize Old Republic Title Company to disburse \$40,000.00 of the net proceeds to Debtor after all payoff, closing costs, and the Trustee's demand are paid.
- Q. Debtor is to provide the Chapter 13 Trustee a copy of the escrow closing statement withing 14 days of the close of escrow.

TRUSTEE'S NON-OPPOSITION

On November 10, 2021, David Cusick, Chapter 13 Trustee filed a Non-Opposition to the Debtor's Motion to Sell, Dckt. 53. The Non-Opposition states the Trustee does not oppose the sale as long as the Order states that the Trustee shall receive proceeds less Debtor's requested \$40,000.00, as a lump sum payment to her plan. Further, the Trustee notes, Debtor's confirmed plan does not call for a

lump sum payment, and therefore may need to be modified.

DISCUSSION

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: xxxxxxxxxxxxxxxxxx.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because it would pay off the mortgage attached to the house and provide \$18,393.82 to be used to pay off other debts.

Movant has estimated that a five percent broker's commission from the sale of the Property will equal approximately \$21,250.00. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than five percent commission.

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 Sell filed by Toni Hendricks Painter ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS FURTHER ORDERED that Toni Hendricks Painter, Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Maria Palazzolo or nominee ("Buyer"), the Property commonly known as 317 Riverwood Lane, Rio Vista,, California 94571 ("Property"), on the following terms:

- A. The Property shall be sold to Buyer for \$425,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 50, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.
- D. Chapter 13 Debtor is authorized to execute any and all documents reasonably necessary to effectuate the sale.
- E. Chapter 13 Debtor is authorized to pay a real estate broker's commission in an amount not more than 5.0 percent of the actual purchase price upon consummation of the sale. The 5.0 percent commission shall be paid to Chapter 13 Debtor's agent, Ralene Nelson with Chris Re/Max Grupe Gold.

- F. 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.

All net sales proceeds, after payment to/for 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.

- G. The Chapter 13 Debtor is authorized to receive the \$3,000.00 HAFA Incentive Program monies, but no other fees, compensation, or other monies in connection with this sale. Within fourteen days of the close of escrow, Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement.

6. [21-21844-E-13](#) **THOMAS/WHITNEY JOHNSON** **MOTION TO CONFIRM PLAN**
[SLE-1](#) **Steele Lanphier** **10-7-21 [30]**

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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 7, 2021. By the court's calculation, 47 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 Rules 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). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Confirm the Amended Plan is denied.

The debtor, Thomas Winton Johnson and Whitney Eriksmoen Johnson (“Debtor”), seeks confirmation of the Amended Plan. The Amended Plan provides for the Plan shall be considered current with \$340 paid in through September 2021. Plan payments shall be \$85.00 for the remainder of the 36 month plan. Amended Plan, Dckt. 34. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on October 25, 2021. Dckt. 41. Trustee opposes confirmation of the Plan unless:

- A. Debtor provides a detailed statement of business income and expenses as required under Schedule I.
- B. Debtor schedules their business and includes an estimated value on Schedule A/B.
- C. The Trustee believes Debtor’s business expenses may be present on Schedule J based on the documents the Trustee has received and testimony given at the meeting of creditors. However, the Trustee is not certain this is correct.

Trustee insists this evidence needs to be before the Court to find that the Debtor can make the payments called for under the plan.

DISCUSSION

Failure to File Business Documents Required by Schedule I

The Chapter 13 Trustee argues that Debtor has failed to file a statement of gross business income and expenses attached to Schedule I. Line 8a of Schedule I requires Debtor to “[a]ttach a statement for each property and business showing gross receipts, ordinary and necessary business expenses, and the total monthly net income.” Debtor is required to submit that statement and cooperate with the Chapter 13 Trustee. 11 U.S.C. § 521(a)(3). Debtor has not provided the required attachment.

Insufficient Information

Debtor has supplied insufficient information relating to the real property/assets to assist the Chapter 13 Trustee in determining the value of the property/assets. Debtor fails to report the Information Leading to an Accurate Valuation of the Property/Assets.

Failure to Afford Plan Payment / Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). A detailed statement of business income and expenses as required under Schedule I. Further, scheduling their business and including an estimated value on Schedule A/B. These documents are needed for the Court to make an accurate determination if the Debtor can afford the proposed plan. Without an accurate picture of Debtor’s financial reality, the court cannot determine whether the Plan is

confirmable.

The Amended Plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and 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 Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Thomas Winton Johnson and Whitney Eriksmoen Johnson (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Confirm the Amended Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

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.

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 20, 2021. By the court's calculation, 34 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).

Under the facts and circumstances of this Motion, the court shortens the time to the 34 days given.

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Confirm the Modified Plan is denied.

The debtor, Jasmine Rae Smith ("Debtor") seeks confirmation of the Modified Plan because she lost her job and is unable to make her monthly payments. Declaration, Dckt. 110. Further, Debtor is eligible for unemployment benefits but does not know when she will be receiving them. *Id.* She is currently working for Instacart making roughly \$100.00 a week. *Id.* When her Instacart income increases, her unemployment benefits will decrease. *Id.* The Modified Plan provides the plan shall be considered current with \$8,436.00 paid in through September 2021, (Month 30). Beginning October 2021, and continuing through Month 48, the Plan payment shall be \$394 a month, and a 5.0 percent dividend to unsecured claims totaling \$17,000.00. Further, Attorney's fees shall be paid in full prior to distribution to General Unsecured Creditors. Modified Plan, Dckt. 109. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on November 9,

2021. Dckt. 116. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor is delinquent \$394.00 under the terms of the proposed modified plan, where \$8,830.00 has come due through October 2021. Debtor has paid a total of \$8,436.00 paid in through September 2021, then \$394.00 per month beginning in October 2021 through Month 48. Debtor's last payment to the Trustee came on July 12, 2021 in the amount of \$292.00.
- B. Debtor's Schedule I and J filed October 20, 2021, are filed as an Exhibit only and are not reflected on the Court's docket as an amended or supplemental schedule of expenses. This makes it difficult for parties to find the Debtor's most recent budget on file with the Court.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is \$394.00 delinquent in plan payments, which represents one month of the \$394.00 plan payment. Before the hearing, another plan payment will be due. According to the Chapter 13 Trustee, the Plan in § 2.01 calls for payments to be received by the Chapter 13 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).

Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor has not filed supplemental Schedules I and J in representation of her current income and expenses. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

The Modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 and 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 Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Jasmine Rae Smith ("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 denied, and the proposed Chapter 13 Plan is not confirmed.

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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 18, 2021. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Confirm the Modified Plan is denied.

The debtor, Timothy A. West and Rosa Meria West ("Debtor") seek confirmation of the Modified Plan because they fell behind on their plan payments due to financial and emotional circumstances. Declaration, Dckt. 68. Debtor Rosa's father is dying, which has generated some unexpected expenses. *Id.* Unfortunately, her father will be passing soon thus improving their financial situation. *Id.* The Modified Plan provides the Plan shall be considered current with \$25,460.00 paid in through September 2021. Plan payments shall thereafter be \$1,860.00 per month until plan completion, and a 0.0 percent dividend to unsecured claims totaling \$76,508.45. Modified Plan, Dckt. 69. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CREDITOR'S OPPOSITION

Deutsche Bank National Trust Company ("Creditor") holding a secured claim filed an Opposition on November 9, 2021. Dckt. 73. Creditor opposes confirmation of the Plan on the basis that:

- A. The modified Chapter 13 plan does not promptly cure Creditor's post-petition arrears. Debtor's Plan states that Debtor's post-petition arrears in the amount of \$8,207.29. However, Creditor's Amended Proof of

Claim 14-2 reflects post-petition arrears in the amount of \$12,822.08.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on November 9, 2021. Dckt. 75. Trustee opposes confirmation of the Plan on the basis that:

- A. The Trustee lacked sufficient funds to pay the post-petition contract installments to PHH Mortgage Services in the amount of \$7,034.82 for the months of December 2020, and February, May, July, August, and September 2021. The Modified plan does attempt specify a cure of the post petition arrearage by adding an additional \$3,517.41 to the existing post-petition arrears, thereby increasing the total amount from \$4,689.88 to \$8,207.29. The plan proposes an incorrect post-petition arrearage amount and does not specify which months were missed.
- B. Debtor has not filed supplemental Schedules I and J in representation of his current income and expenses.

DISCUSSION

Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts \$12,822.08 in post-petition arrearages. The Plan does not propose to cure those arrearages. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearages.

Failure to Afford Plan Payment / Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor has not filed supplemental Schedules I and J in representation of his current income and expenses. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

The Modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 and 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 Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Timothy A. West and Rosa Meria West ("Debtor") having been presented

to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Modified Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

FINAL RULINGS

9. [17-23305-E-13](#) **CHERRI DA ROZA** **MOTION TO MODIFY PLAN**
[CYB-4](#) **Candace Brooks** **10-19-21 [114]**

Final Ruling: No appearance at the November 23, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 19, 2021. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy 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, Cheri Mae Da Roza ("Debtor"), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on November 9, 2021. Dckt. 125. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 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 Modified Chapter 13 Plan filed by the

debtor, Cherri Mae Da Roza (“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 October 19, 2021, 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.

10.	<u>18-25525-E-13</u> <u>PSB-1</u>	TRACY HASTINGS Paul Bains	MOTION FOR COMPENSATION BY THE LAW OFFICE OF BAINS LEGAL, PC FOR PAULDEEP BAINS, DEBTORS ATTORNEY(S) 10-14-21 [52]
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Final Ruling: No appearance at the November 23, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 14, 2021. By the court’s calculation, 40 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.

Pauldeep Bains, the Attorney (“Applicant”) for Tracey Allison Hastings, Debtor in

Possession (“Client”), makes a First Interim Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period November 23, 2020, through October 14, 2021. The order of the court approving employment of Applicant was entered on December 3, 2020. Dckt. 48. Applicant requests fees in the amount of \$1,802.50.

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 consultation, preparing emails and documentation, and conducting correspondence with the Trustee. 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.

General Case Administration: Applicant spent 6.9 hours in this category. Applicant prepared motions to substitute attorney, drafted an amendment, correspondence between trustee and creditor, and emailed with the debtor.

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
Pauldeep Banes, Attorney	6.1	\$325.00	\$1,982.50
Tina Perez, Paralegal	.8	\$185.00	\$148.00

Total Fees for Period of Application	\$2,130.50
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Applicant is “discounting” \$325.00 of these fees. Although that brings the total to \$1,805.50, Applicant is only requesting \$1,802.50.

FEES 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 Interim Fees in the amount of \$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.

The court authorizes the Chapter 13 Trustee to pay 100% of the fees 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	\$1,802.50
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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 Pauldeep Bains (“Applicant”), Attorney for Tracy Allison Hastings, 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 Pauldeep Bains is allowed the following fees and expenses as a professional of the Estate:

Pauldeep Bains, Professional employed by Chapter 13 Debtor

Fees in the amount of \$1,805.50

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 allowed by this Order from the available Plan Funds in a

manner consistent with the order of distribution in a Chapter 13 case.

11. [19-22340-E-13](#) **JOSHUA/CONNIE NORMAN** **MOTION TO INCUR DEBT**
[PGM-4](#) **Peter Macaluso** **10-26-21 [52]**

Final Ruling: No appearance at the November 23, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 26, 2021. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion to Incur Debt is granted.

Joshua Lynn Norman and Connie Lynn Norman ("Debtor") seeks permission to purchase real property commonly known as 3205 Redwing Drive, Bellevue, NE 68123, with a total purchase price of \$257,500.00 and monthly payments of \$1,612.00 to Mortgage Research Center, LLC dba Veterans United over 30 years with a 3.375% fixed interest rate.

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." FED. R. BANKR. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

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 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 Incur Debt filed by Joshua Lynn Norman and Connie Lynn Norman (“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 Joshua Lynn Norman and Connie Lynn Norman is authorized to incur debt pursuant to the terms of the agreement, Exhibit B, Dckt. 55.

12.	<u>19-21741</u> -E-13 <u>MJD-6</u>	ROLDAN SEBEDIA Matthew DeCaminada	MOTION TO MODIFY PLAN 10-19-21 [135]
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Final Ruling: No appearance at the November 23, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 19, 2021. By the court’s calculation, 35 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Roldan Biansat Sebedia (“Debtor”), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Non-Opposition on November 9, 2021. Dckt. 144. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 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 Modified Chapter 13 Plan filed by the debtor, Roldan Biansat Sebedia (“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 October 19, 2021, 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.

13.	<u>21-20859-E-13</u> <u>JSO-2</u>	TERRY MAYS Jeffrey Ogilvie	MOTION TO CONFIRM PLAN 10-19-21 [38]
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CASE DISMISSED: 10/26/2021

Final Ruling: No appearance at the November 23, 2021 hearing is required.

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

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

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

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

IT IS ORDERED that the Motion is dismissed as moot, the case having been dismissed.

Final Ruling: No appearance at the November 23, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on October 7, 2021. By the court’s calculation, 47 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 Motion to Value Collateral and Secured Claim of Onemain Financial Group, LLC (“Creditor”) is granted, and Creditor’s secured claim is determined to have a value of \$5,000.00.

The Motion filed by Donail Hood and Debbie Kaye Wilkes (“Debtor”) to value the secured claim of Onemain Financial Group, LLC (“Creditor”) is accompanied by Debtor’s declaration. Declaration, Dckt. 19. Debtor is the owner of a 2009 Nissan Altima (“Vehicle”). Debtor seeks to value the Vehicle at a replacement value of \$5,000.00 as of the petition filing date. As the owner, Debtor’s opinion of value is evidence of the asset’s value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

TRUSTEE’S NON-OPPOSITION

On November 8, 2021, David Cusick, Chapter 13 Trustee, filed a Non-Opposition to Debtor’s Motion to Value Collateral, Dckt. 30. The Non-Opposition states that the Creditor is included in the proposed plan Class 2(B)1 with a value of \$5,000.00. Further, the Creditor filed Proof of Claim 3-1 claiming a total of \$14,299.22, \$9,150.00 in secured and \$5,149.22 in arrears. Additionally, the Trustee has not disbursed any funds to Creditor Onemain Financial Group, LLC, to date. Lastly, Debtors declare that the vehicle is in fair condition with over 63,000 miles on the car.

DISCUSSION

The lien on the Vehicle's title secures a non-purchase-money loan incurred on December 2020, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$14,299.22. Proof of Claim, No. 3-1. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of \$5,000.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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 Donail Hood and Debbie Kaye Wilkes ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Onemain Financial Group, LLC ("Creditor") secured by an asset described as 2009 Nissan Altima ("Vehicle") is determined to be a secured claim in the amount of \$5,000.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$5,000.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

Final Ruling: No appearance at the November 23, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—No 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, parties requesting special notice, and Office of the United States Trustee on October 12, 2021. By the court's calculation, 42 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 Plan has been set for hearing on the notice required by Local Bankruptcy Rules 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). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Confirm the Amended Plan is granted.

The debtor, Donail Hood and Debbie Kaye Wilkes ("Debtor"), seek confirmation of the Amended Plan. The Amended Plan provides for unsecured creditors to receive no less than a 0% dividend with approximately a total of \$104,568.00 in unsecured debt. Debtors' unsecured creditors will receive at least what they would receive in the event of a Chapter 7 liquidation. Further, administrative fees shall be paid as follows: \$175.00 for the first four months of the plan, and \$60.00 per month until fees are paid in full. Debtors' Class 2 Claims, pursuant to Section 3.08 of their plan, shall be paid beginning the fifth month of the plan and continuing until the claims are paid in full. Amended Plan, Dckt. 15. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on November 2, 2021. Dckt. 27. Trustee opposes confirmation of the Plan on the basis that:

- A. The Debtor cannot afford to make the payments or comply with the Plan because the Debtor's Plan relied on the Motion to Value Collateral, filed on October 7, 2021, Dckt. 17. If the motion to value is not granted,

Debtor's Plan may not have sufficient monies to pay the claim in full and therefore should also be denied confirmation.

DISCUSSION

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 OneMain Financial Group, LLC. The court granted the Motion to Value, and valued the collateral at \$5,000.00, making the Plan feasible. 11 U.S.C. § 1325(a)(6).

The Amended Plan complies with 11 U.S.C. §§ 1322, 1323, 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, Donail Hood and Debbie Kaye Wilkes ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Confirm the Amended Plan is granted, and the proposed Chapter 13 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, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the November 23, 2021 hearing is required.

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 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on November 2, 2021. By the court’s calculation, 21 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 court has determined oral argument will not be of assistance in rendering the decision on this Motion.

The Motion to Value Collateral and Secured Claim of the Internal Revenue Service is granted, and Creditor’s secured claim is determined to have a value of \$706.46.

The Motion filed by Maria Luz Tirado De Fink (“Debtor”) to value the secured claim of the Internal Revenue Service (“IRS” or “Creditor”) is accompanied by Debtor’s declaration. Declaration, Dckt. 10. Debtor is the owner of various personal property affects such as clothing or jewelry (“Property”). Debtor seeks to value the Property at a replacement value of \$706.46 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 David Cusick (“Trustee”) filed a response on November 9, 2021. Dckt. 15. Trustee notes the following.

Creditor filed Proof of Claim on November 15, 2021 for claim of \$152,628.36. Debtor, in their motion, indicates that the IRS in Sacramento County has a claim assessed against Debtor for the tax year 2011. Motion, Dckt. 8. IRS recorded a lien against Debtor on or about April 23, 2014. Declaration, Dckt. 10. Debtor seeks to have that lien valued at the value of Debtor’s personal property, pursuant to 26 U.S.C. § 6321. Motion, Dckt. 8. Debtor calculates the total value of her worldwide assets as \$706.46. Declaration, Dckt. 10. Debtor declares the debt is attributed to her husband’s

business, and she has made several unsuccessful attempts to resolve the matter with the IRS under the innocent spouse doctrine. *Id.* She currently owns no real property or vehicles. *Id.*

As has been disclosed, in filing proofs of claim, the IRS makes its own calculation for purposes of 11 U.S.C. § 506(a) based upon Debtor's assets and then bifurcates the secured and unsecured portions of its claim. The IRS appears to have followed that procedure here.

Review of Proof of Claim 1-1

In Proof of Claim 1-1, Creditor states a proof of claim for \$152,628.36. Creditor states having a secured claim in the amount of \$706.46 and an unsecured claim in the amount of \$151,921.90. Proof of Claim 1-1, § 9.

RULING

Upon review of the evidence and the statement of the secured claim for the IRS in Proof of Claim No. 1-1, the court determines the value of the secured claim to be \$706.46, the same amount requested in the Motion, the Motion is granted. All amounts in excess of the \$706.46 are an unsecured claim.

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 Maria Luz Tirado De Fink ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of the Internal Revenue Service ("IRS" or "Creditor") secured by an asset described as "all worldwide assets" ("Property") is determined to be a secured claim in the amount of \$706.46, and the balance of the claim is an unsecured claim (whether priority or general unsecured claim) to be paid through the confirmed bankruptcy plan.