

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOHN ROBERT REICHARD,
Debtor; ERICKA RAE
REICHARD, Debtor,
Appellants,
v.
RUSSELL A. BROWN,
Chapter 13 Trustee,
Appellee.

No. 20-15661
D.C. No.
2:19-cv-02010-DJH
MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Diane J. Humetewa, District Judge, Presiding

Submitted November 16, 2020**
Phoenix, Arizona

Before: BYBEE, MURGUIA, and BADE, Circuit
Judges.

John Robert Reichard and Ericka Rae Reichard
(collectively, Reichards) appeal the district court's
judgment affirming the bankruptcy court's decision to
deny confirmation of their Chapter 13 plan. We have
jurisdiction pursuant to 28 U.S.C. §§ 158(d)(1) and

* This disposition is not appropriate for publication and is
not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for
decision without oral argument. See Fed. R. App. P. 34(a)(2).

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1291. We review de novo the “district court’s decision on appeal from a bankruptcy court,” *In re Point Ctr. Fin., Inc.*, 957 F.3d 990, 995 (9th Cir. 2020) (citation omitted). We give no deference to the district court’s decision and conduct our own independent review of the bankruptcy court’s decision, *Id.* We affirm.

1. The Reichards argue that the bankruptcy court erred by denying confirmation of their proposed Chapter 13 plan on the ground that it did not include a provision requiring them to provide their tax returns to the Trustee, as District of Arizona Local Form 2084-4(F) requires. The Reichards argue that Local Form 2084-4(F) is inconsistent with an Act of Congress and certain bankruptcy rules and, therefore, violates Rule 9029(a)(1) of the Federal Rules of Bankruptcy Procedure and is invalid.

Rule 9029(a)(1) prohibits local rules that are either not “consistent with,” or are “duplicative of,” Acts of Congress or the Federal Rules of Bankruptcy Procedure. See Fed. R. Banta. P. 9029(a)(1); *In re Healthcentral.com*, 504 F.3d 775, 784 (9th Cir. 2007). A local rule is not consistent with another law when it is “incompatible” with it. *ABS Ent., Inc. v. CBS Corp.*, 908 F.3d 405, 427 (9th Cir. 2018).

The Reichards argue that Local Form 2084-4(F) is not consistent with 11 U.S.C. § 521, which allows a trustee to obtain a debtor’s tax returns from the court but imposes procedures for the protection of return information. The Reichards assert that Local Form 2084-4(F) is inconsistent with the “specific statutory

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scheme” § 521 creates “for the turnover and handling of [a] debtor’s income tax returns.” But § 521 is not the exclusive means by which a trustee can gain access to a debtor’s tax returns. *See, e.g.*, Fed. R. Bankr. P. 2004; *id.* 7034. And because § 521 is not the only method for a trustee to obtain a debtor’s tax returns, Local Form 2084-4(F) is not incompatible with § 521 simply because it provides another method for a trustee to obtain this information.¹ We therefore conclude that Local Form 2084-4(F) is not inconsistent with § 521 such that it violates Rule 9029(a)(1).

The Reichards also argue that Local Form 2084-4(F) is invalid because it imposes requirements that differ from the requirements of the Bankruptcy Code and the bankruptcy rules. But Rule 9029(a)(1) provides that a local rule must be both “consistent with,” and “not duplicative of,” the Code and bankruptcy rules. Fed. R. Bankr. P. 9029(a)(1); *Healthcentral.com*, 504 F.3d at 784. Accordingly, to be valid, a local rule—by Rule 9029(a)(1)’s terms—must differ at least somewhat from the Code and bankruptcy rules. Consequently, the Reichards’ argument that Local Form 2084-4(F) is invalid because it is not duplicative of the Code and bankruptcy rules fails.

¹ The Reichards contend that Local Form 2084-4(F) violates Rule 9029(a)(2) because it affects their purported substantive privacy rights under § 521. However, Local Form 2084-4(F)’s requirements are separate and apart from § 521’s provisions and thus any privacy concerns that may be implicated by § 521 are not applicable.

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The Reichards also assert that Local Form 2084-4 is not consistent with Rules 3015(c) and 3015.1(e) of the Federal Rules of Bankruptcy Procedure. However, the Reichards waived this argument by failing to raise it in the bankruptcy court. *See In re Mortg. Store, Inc.*, 773 F.3d 990, 998 (9th Cir. 2014). Although it is within our discretion to consider an argument that was not raised before the bankruptcy court, *see id.*, we decline to do so here.

Accordingly, we conclude that the bankruptcy court did not err in denying confirmation based on the Reichards' failure to include a provision in the proposed Chapter 13 plan requiring them to provide their post-petition tax returns to the Trustee, as Local Form 2084-4(F) requires.

2. The Reichards also contend that the bankruptcy court erred by denying confirmation on the ground that the proposed confirmation order differed from the noticed plan and thus did not comply with 11 U.S.C. § 1325(a) because of the Reichards' failure to provide notice of the difference. However, because we have determined that the bankruptcy court did not err in denying plan confirmation on the ground that the proposed plan did not comply with Local Form 2084-4(F), we do not need to resolve this issue. *See Bazemore v. Friday*, 478 U.S. 385, 387 n.2 (1986) (per curiam); *Rodis v. City, County of San Francisco*, 558 F.3d 964, 970 (9th Cir. 2009).

AFFIRMED.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

IN THE MATTER OF: John Robert Reichard, Debtor.	No. CV-19-02010-PHX- BK NO. 2:16-BK-12633
Ericka Rae Reichard, et al., Appellant, v. Russell Brown, Appellee.	JUDGMENT IN A CIVIL CASE (Filed Mar. 12, 2020)

Decision by Court. This action came for consideration before the Court. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that pursuant to the Court's Order filed March 12, 2020, the Decision of the Bankruptcy Court is AFFIRMED and this action is hereby dismissed.

Debra D. Lucas
Acting District Court Executive/
Clerk of Court

March 12, 2020

By s/ W. Poth
Deputy Clerk

NOT FOR PUBLICATION
**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

John Robert Reichard, et al., Appellants, v. Russell Brown, Appellee.	No. CV-19-02010-PHX- DJH ORDER (Filed Mar. 12, 2020)
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This appeal arises from the United States Bankruptcy Court for the District of Arizona's Order denying confirmation of the plan of reorganization for Chapter 13 Debtors John Robert Reichard and Ericka¹ Rae Reichard ("Debtors"). (Doc. 9-1).

I. Background

Debtors filed a voluntary petition seeking relief under Chapter 13 of the Bankruptcy Code on November 2, 2016. Thereafter, Debtors filed their proposed Chapter 13 Plan (the "Proposed Plan") and it was noticed to all parties who had filed a proof of claim in the bankruptcy case. Harley Davidson Credit Corporation ("Harley") filed a proof of claim, asserting a secured claim in the amount of \$6,255.00, and an unsecured claim in the amount of \$261.11. Debtors' Proposed

¹ Ms. Reichard's name is spelled a number of different ways in her briefing to the Court. The Court has used the spelling that is used in the Bankruptcy Court's case caption.

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Plan, however, proposed to pay Harley \$6,500.00 on its secured claim, which amounts to \$245.00 more than Harley is entitled on its secured claim. The parties appear to agree that the \$6,500.00 figure contained in the Proposed Plan is a scrivener's error; nonetheless, the Bankruptcy Court held that pursuant to the Bankruptcy Rules, Harley was entitled to notice of the change to its secured claim amount. (Doc. 9-1). Debtors, however, argue that the Bankruptcy Court erred in holding that Harley was entitled to receive notice of the change.

In addition to the notice issue with Harley's claim, the Chapter 13 Trustee assigned to Debtors' case, Russell Brown (the "Trustee"), had several objections to the Proposed Plan, namely that the Proposed Plan did not provide for post-petition tax returns to be submitted to the Trustee. (Doc. 17). While the Debtors' case was pending, Federal Rule of Bankruptcy Procedure ("FRBP") 3015 was amended, as was the National Chapter 13 Model Plan Form. Fed. R. Bankr. P. 3015. The amended Rule requires bankruptcy courts to either use the National Model Plan Form or come up with their own Local Plan Forms. *Id.* at 3015(c). Of note, the National Plan Form contains a provision option that requires that "Debtor(s) will supply the trustee with a copy of each income tax return filed during the plan term within 14 days of filing the return and will turn over to the trustee all income tax refunds received during the plan term." Official Form 113 (Dec. 2017).

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The District of Arizona decided to amend its Local Bankruptcy Rules and create a new Local Plan Form, in accordance with FRBP 3015(c). *See L.R.Bankr.Pro. 2084.* The new Local Rule, 2084-4, took effect on December 1, 2017 and applies to this case. General Order No. 17-1. Local Rule 2084-4 requires Chapter 13 debtors to use Local Plan Form 2084-4 (the “Local Form”). The provision in the Local Form states that “[w]hile the case is pending, the Debtor shall provide to the Trustee a copy of any post-petition tax return within 14 days after filing the return with the tax agency.” Local Form 2084-4 (Dec. 2017). Debtors were required to include this provision in their Proposed Plan pursuant to Local Rule 2084-4(a). Debtors refused to do so, and the Trustee objected. The parties requested that the Bankruptcy Court decide the issue.

The Bankruptcy Court held that the use of the Local Plan Form was mandatory in this case and that Debtors were required to include the provision regarding post-petition tax returns in their Proposed Plan. The Court concluded that the post-petition tax provision did not violate the Bankruptcy Code or any other law. (Doc. 9-1). Debtors appealed the decision to this Court.

The issues on appeal are (1) whether the Bankruptcy Court erred in holding that Debtors could not modify Harley’s secured claim without first providing notice to Harley; and (2) whether the provision of the Bankruptcy Court’s Chapter 13 Local Plan Form requiring Debtors to turn over their post-petition tax

returns to the Trustee violates any provision of the Bankruptcy Code.

II. Standard of Review

Pursuant to 28 U.S.C. § 158(a)(1), the District Court has jurisdiction over appeals from “final judgments, orders, and decrees” of bankruptcy judges. Rule 8013 of the Federal Rules of Bankruptcy Procedure (“FRBP”) states that, “on an appeal the district court . . . may affirm, modify, or reverse a bankruptcy judge’s judgment, order, or decree or remand with instructions for further proceedings. Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the bankruptcy court to judge the credibility of the witnesses.” Fed. R. Bankr. Pro. 8013.

This Court reviews a bankruptcy court’s decision related to the confirmation of a plan for an abuse of discretion. *In re Marshall*, 721 F.3d 1032, 1045 (9th Cir. 2013). “A bankruptcy court abuses its discretion if it applies an incorrect legal standard or misapplies the correct legal standard . . . ”. *TrafficSchool.cont Inc. v, Edriver Inc.*, 653 F.3d 820, 832 (9th Cir. 2011). Findings of fact are reviewed for clear error. *In re Bea*, 533 B.R. 283, 285 (9th Cir. B.A.P. 2015). This Court “must affirm the bankruptcy court’s fact findings unless [it] determine[s] that those findings are ‘(1) illogical,’ (2) ‘implausible,’ or (3) without ‘support in inferences that may be drawn from the facts in the record.’” *United*

States v. Hinkson, 585 F.3d 1247, 1262 (9th Cir. 2009) (*en banc*). In other words, the Court must accept the bankruptcy court’s findings of fact unless the Court “is left with the definite and firm conviction that a mistake has been committed[.]” *In re Greene*, 583 F.3d 614, 618 (9th Cir. 2009). This Court “may affirm the decision of the bankruptcy court on any basis supported by the record.” *ASARCO v. Union Pac. Co.*, 765 F.3d 999, 1004 (9th Cir. 2014). The standard of adequacy of factual findings is “whether they are explicit enough on the ultimate issues to give the appellate court a clear understanding of the basis of the decision and to enable it to determine the grounds on which the trial court reached its decision.” *Louie v. U.S.*, 776 F.2d 819, 822-23 (9th Cir. 1985) (quoting *Nicholson v. Bd. of Education Torrance Unified School District*, 682 F.2d 858, 866 (9th Cir. 1982)). The Court reviews “chapter 13 plan confirmation issues requiring statutory interpretation *de novo*.” *In re Giesbrecht*, 429 B.R. 682, 687 (B.A.P. 9th Cir. 2010).

III. Analysis

The Court will first address the proposed amendment of Harley’s secured claim. The Court reviews the Bankruptcy Court’s legal conclusions *de novo*.

A. Amendment to Harley’s Secured Claim

In the bankruptcy proceeding, Debtors sought to modify Harley’s secured claim from the amount initially proposed due to an apparent scrivener’s error.

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Debtors argue that they should be able to modify the Plan's treatment of the secured claim without giving Harley notice of the amendment and an opportunity to respond. (Doc. 5 at 9). Debtors argue that even with the amendment, Harley will be paid its full secured claim amount. While the difference in the amount initially listed and the proposed modified amount is fairly small, the Bankruptcy Court held that regardless of the amount, the Bankruptcy Code requires an amended Plan to be filed in order to put the creditor on notice of any changes in treatment to their secured claims. (Doc. 9-1 at 6). This Court agrees.

The Bankruptcy Code contemplates that a debtor may modify or amend the plan before confirmation. Section 1323(a) states that “[t]he debtor may modify the plan at any time before confirmation.” This modification becomes part of the new plan. 11 U.S.C. § 1323(b). However, the FRBP requires that notice be given to affected creditors. Fed. R. Bankr. Pro. 2002(a)(5). The affected creditor has 21 days to accept or object to a proposed modification of a debtor's plan after receiving notice. (*Id.*)

The Proposed Plan, as initially noticed, projected to pay Harley \$6,500 on its secured claim. Debtors seek to reduce the secured claim amount to \$6,255, which is the amount that Harley submitted on its Notice of Claim, a difference of \$245. While the Bankruptcy Court noted that it appeared that the proposed amendment was only to fix a prior mistake, it held that Harley is entitled to receive notice and have an

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oppourtunity to object to the amendment.² The plain language of the FRBP require such notice be given, regardless of the amount of the change in the claim or the reason for the amendment. Fed. R. Bankr. P. 2002(a)(5). The Court finds that the Bankruptcy Court did not abuse its discretion in finding that Debtors had to re-notice their Proposed Plan. After reviewing the legal conclusions *de novo*, the Court finds that Debtors are entitled to modify their Chapter 13 Plan, but that the Bankruptcy Code requires Harley receive notice and an oppourtunity to object to that amendment.

B. Post-Petition Tax Return Requirement

Debtors next argue that the Local Plan Form that requires debtors to provide post-petition tax returns to the Trustee is unlawful. (Doc. 5 at 5). Debtors acknowledge that there are mechanisms in the Code for the Trustee to obtain tax returns from Chapter 13 Debtors post-petition, namely 11 U.S.C. § 521(f). However, they essentially argue that Section 521(f) is the only mechanism by which a debtor can be compelled to provide post-petition tax returns to the Trustee. (*Id.* at 10-11). The Trustee argues that the Bankruptcy Court permissibly enacted the new Local Plan Form, which requires Chapter 13 debtors to transfer their post-petition tax returns directly to the Trustee during the pendency of their Plan, and further argues that 11

² Alternatively, the Bankruptcy Court held that Debtors could seek a stipulation from Harley that it consented to the treatment of its secured claim. (Doc. 9-1 at 10). It does not appear that Debtors sought a stipulation.

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U.S.C. § 521(f) is not the exclusive means for obtaining post-petition returns. (Doc. 17). The Bankruptcy Court agreed with the Trustee and rejected Debtors' objections. (Doc. 9-1).

1. Duties of the Trustee

Chapter 13 bankruptcy protection “affords individuals receiving regular income an opportunity to obtain some relief from their debts while retaining their property.” *Bullard v. Blue Hills Bank*, 575 U.S. 496 (2015). However, in order to receive this protection, a debtor must propose and obtain Court approval of a “plan under which [the debtor] pay[s] creditors out of . . . future income . . . ” and agrees to be overseen by a Chapter 13 trustee. *Hamilton v. Lanning*, 560 U.S. 505, 508 (2010).

Both the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure broadly empower Chapter 13 trustees to gather information in Chapter 13 cases. A primary duty of the trustee is to “investigate the financial affairs of the debtor.” 11 U.S.C. §§ 704(a)(4). Chapter 13 trustees also have the duty to request modification of confirmed plans to “increase or reduce the amount of payments” based on a debtor’s post-petition income. 11 U.S.C. § 1329(a)(1). The Trustee is further authorized to examine “the financial condition of the debtor, or to any matter which may affect the administration of the debtor’s estate, or the debtor’s right to a discharge” in addition to “the source of any money or property acquired or to be acquired by the debtor for

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the purposes of consummating a plan and the consideration given or offered therefor, and any other matter relevant to the case or to the formulation of a plan.” Fed. R. Bankr. P. 2004(b). Debtors are required to “co-operate with the trustee as necessary to enable the trustee to perform the trustee’s duties.” 11 U.S.C. § 521(a)(3).

Tax returns are a primary way in which trustees verify a debtor’s income. One way that a trustee can obtain a debtor’s post-petition tax returns is outlined in Section 521(0). That provision states:

At the request of the court, the United States trustee, or any party in interest in a case under chapter 7, 11, or 13, a debtor who is an individual shall file with the court- at the same time filed with the taxing authority, a copy of each Federal income tax return required under applicable law (or at the election of the debtor, a transcript of such tax return) with respect to each tax year of the debtor ending while the case is pending under such chapter.

The purpose of allowing the Trustee to access a debtor’s post-petition tax returns “appears to be to allow interested parties like [the] Trustee to monitor a debtor’s financial condition during the pendency of the chapter 13 case and to seek plan modification under § 1329 if there are material increases in net income that can be captured for contribution,” *In re Romeo*, 2018 WL 1463850, at *4 (B.A.P. 9th Cir, Mar. 23, 2018). Such use of post-petition tax returns is consistent with the Bankruptcy Code. See *Fridley v. Forsythe* (*In re*

Fridley), 380 B.R. 538, 544 (B.A.P. 9th Cir. 2007) (discussing the necessity of tax returns in providing “information needed by a trustee . . . to decide whether to propose hostile § 1329 plan modifications”); *Danielson v. Flores (In re Flores)*, 735 F.3d 855, 860 (9th Cir. 2013) (discussing permissibility of “modification of the plan to increase the debtor’s payments if the debtor acquires disposable income during the pendency” of the Plan term).

2. History of Arizona’s Local Plan Form

Bankruptcy courts have long been delegated authority from the district courts to adopt local rules prescribing the conduct of business and to improve judicial economy. Fed. R. Bankr. P. 9029, “Federal Rule of Bankruptcy Procedure 9029 governs the making and amending of rules, and permits the district court to authorize the bankruptcy judges of the district to make and amend rules of practice and procedure which are consistent with . . . Acts of Congress and these rules and which do not prohibit or limit the use of the Official Forms.” *In re Reyes*, 482 B.R. 603, 607 (D. Ariz. 2012). FRBP 9029 allows for the making of local bankruptcy rules so long as they are not inconsistent with the more general Bankruptcy Rules. *Bersher Invs. v. Imperial Sav. Ass’n. (In re Bersher Invs.)*, 95 B.R. 126, 129 (9th Cir. BAP 1988). Rule 83 of the Federal Rules of Civil Procedure imposes the additional requirement that local rules may only be enacted or amended “[a]fter giving public notice and an opportunity for comment.” Fed. R. Civ. P. 83.

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FRBP 3015, as amended in December 2017, requires that the National Plan Form be used in all Chapter 13 cases, unless a Local Plan Form that complies with FRBP 3015 has been implemented at the district level. Fed. R. Bankr. P. 3015. The District of Arizona Bankruptcy Court decided to adopt a Local Plan Form, rather than use the National Plan Form. Following notice by publication and a period for public comment, the bankruptcy judges approved the Local Plan Form for use in the District of Arizona. Pursuant to Local Rule 2084-4 and General Order No. 17-1, the Local Plan Form “must be used for all original, amended, or modified plans” in all Chapter 13 cases.

At issue here is the Local Plan Form which requires Chapter 13 debtors to submit post-petition tax returns directly to the trustee each year. The Local Plan Form obviates the need for a trustee to request those returns from the Bankruptcy Court every year in every Chapter 13 case. As the trustee and the bankruptcy court identified, this provision is by no means unique to the District of Arizona. In fact, 12 of the 15 Districts within the Ninth Circuit have a post-petition tax return requirement, in addition to the requirements of Section 521(f).³ Moreover, the provision

³ This includes Local Plan Forms (“LPF”) in Bankruptcy Courts in the following Districts in the Ninth Circuit: Arizona (LPF 2084-4); Central California (LPF 3015-1); Eastern California (EDC 3-080); Northern California (General Order 34); Southern California (CSD 1300); Guam (GUB 113); Hawaii (H113); Idaho (LRBankr. 1007.3); Montana (Mont. LRBankr. 9009-1); Nevada (NVB 113); Northern Mariana Islands (National Official Form 113); and Oregon (LPF 1300.17). Debtors argue that this

substantially mirrors the tax return provision in the National Plan Form, which is used by all jurisdictions in the United States unless they have implemented a local plan form. (Official Form 113).

3. Application of the Local Plan Form

Debtors argue that Section 521(f) is the only means by which they can be forced to turn over their tax returns, and thus, that the Local Plan Form violates the Bankruptcy Code. Debtors' arguments lack merit for a number of reasons. Nothing in Section 521(f) indicates it is the *only* mechanism by which a trustee can obtain a debtor's tax returns. A plain reading of the statute indicates as much. Indeed, numerous courts have identified many provisions of the Code, other than Section 521(f), that allow a trustee to obtain post-petition returns from post-petition debtors. For instance, the Ninth Circuit Bankruptcy Appellate Panel ("B.A.P.") held that a trustee need not rely on Section 521(1) to obtain debtor's tax returns during a Rule 2004 examination, recognizing that Section 521(f) was not the exclusive means to obtain post-petition tax returns. *In re Romeo*, 2018 WL 1463850, at *6 (B.A.P. 9th Cir. Mar. 23, 2018); *see also In re Parker*, 488 B.R. 794, 798-99 (Bankr. N.D. Ga. 2013) (recognizing

information should not be considered by the Court as it was not raised with the lower court. However, this information is publicly accessible information from other federal courts in this Circuit of which this Court may take notice. *Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001) ("A court may take judicial notice of "matters of public record.")

that courts have “consistently ruled” that tax returns are discoverable documents pursuant to FRBP 7034 for use in an adversary proceeding).

Debtors’ arguments are not novel. In fact, Debtors’ counsel has made similar arguments that have been rejected by appellate courts with regard to turning over financial information to a trustee. One such case was published just last month. *See In re: David Andrew Crow & Renee Toinette Crow*, 2020 WL 710351, at *5-6 (B.A.P. 9th Cir. Feb. 10, 2020). In *Crow*, debtors argued that they had no obligation to provide tax returns to the chapter 13 trustee during the pendency of their confirmed plan. *Id.* The Court held that debtors’ arguments “lacked merit,” noting the cases cited by debtors “did not absolve chapter 13 debtors from providing additional financial information to trustees during their plan terms.” *Id.* Therein, the Court noted the role of the trustee as central to the Chapter 13 process, and stated that “[t]his power of the trustee . . . [is] designed to facilitate a chapter 13 trustee’s ability to monitor a debtor’s postconfirmation financial condition . . . in order to capture material increases in net income that occur during the life of the plan [which] is an important feature of chapter 13.” *Id.* Debtors’ similar arguments in this case are equally unpersuasive.

Moreover, the rule amendment was proposed to promote judicial efficiency and to lower costs of the Chapter 13 process, and was enacted pursuant to the direction of FRBP 3015. The Bankruptcy Court found that the Local Plan Form keeps down the costs of the process while promoting efficient administration of

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justice. (Doc. 9-1 at 9). Courts have an interest in managing their dockets to ensure that justice is expended in an efficient and fair manner to all litigants. *CMAX, Inc. v. Hall*, 300 F.2d 265 (9th Cir. 1962). Over 3,000 Chapter 13 cases were filed in the District of Arizona in 2019. *See* United States Bankruptcy Court for the District of Arizona, 2019 Filing Statistics, <http://www.azb.uscourts.gov/filing-statistics>. Moreover, the Chapter 13 Plan term is generally between three to five years. 11 U.S.C. § 1322(d). If the trustee assigned to each of these cases had to file motions every year in every case in order to obtain post-petition tax returns that they are statutorily obligated to monitor, this would cause a massive influx of potentially thousands of additional motions filed on the court's docket per year.⁴ This would put a strain on an already busy bankruptcy court system, which would, in turn, delay the administration of justice to all litigants. Moreover, the Trustee argues that such a scheme would significantly increase the cost of case administration, which would lead to an increase in attorneys' fees and trustee's costs, which is ultimately passed on to the debtors. 11 U.S.C. § 326(b).

The Bankruptcy Court's decision—after committee approval, a public comment period, and approval by the bankruptcy judges of this District—to use the Plan Form is wholly consistent with FRBP 3015 and 9029(b). Fed. R. Bankr. P. 9029(b) (“[a] judge may

⁴ At the oral argument in the bankruptcy court, the Trustee stated for reference that he alone had “2,400 active cases perhaps 1,500 of those with a confirmed plan.” (Doc. 13-2 at 5).

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regulate practice in any manner consistent with federal law, these rules, Official Forms, and local rules of the district.”). Moreover, as the other courts who have examined the issue have concluded, Section 521(f) is but one way for a trustee to obtain a debtor’s post-petition tax information. *See Romeo*, 2018 WL 1463850, at *6. The use of the similar tax return provision in the National Model Plan Form supports this conclusion. The Court finds no defects in the process in which the Bankruptcy Court for the District of Arizona implemented the Local Plan Form. Debtors cite no law to the contrary and their arguments are unpersuasive.⁵

⁵ The Bankruptcy Court’s Order noted that “it appears the Debtors intent in objecting to this local plan provision is to purposefully increase the cost to the Trustee of obtaining an important source of financial information, the tax returns, and to avoid the disclosure of any changes in their projected disposable income, in order to prevent the Trustee from seeking modification pursuant to Code § 1329. Under the circumstances, any encroachment on the Debtors’ rights is outweighed by the Trustee’s competing duty to investigate and analyze the financial affairs of the Debtors and to seek to modify their plan, if appropriate.” (Doc. 9-1 at 10). Indeed, the Court notes that Debtors’ Opening Brief frames this case as the Trustee “demanding that copies of all post-petition Federal and state income tax returns be delivered to his office on an annual basis.” (Doc. 5 at 8). Debtors also argue that if this Court affirms the lower court, the Trustee “will be able to sit in an office tower in Central Phoenix, have debtors send him copies of their state and Federal income tax returns . . . Then the [Trustee] will use the confirmation order he prepared, and forces debtors to sign, that he can search for changes in their annual disposable income as binding on debtors . . . This is his end game.” (Doc. 5 at 15). While personal arguments such as these are not helpful to the Court in deciding the legal issues, the Court notes

In a final attempt to persuade this Court that the Model Plan Form is unlawful, Debtors argue that the District of Arizona is an outlier, and that there is “no other system that requires what the District of Arizona” does. (Doc. 5 at 13). That is simply not the case. As discussed above, an overwhelming majority of the bankruptcy courts in this Circuit have developed similar mechanisms for Chapter 13 trustees to obtain post-petition tax returns, in addition to substantially similar language being included in the National Model Plan Form. While that fact itself does not make the Model Plan Form legal, that the majority of bankruptcy courts in this Circuit have adopted similar provisions in accordance with FRBP 3015 is instructive. The Bankruptcy Court correctly held that the Local Plan Form permissibly requires debtors to submit their post-petition tax returns to the Chapter 13 trustee.

4. Newly Raised Issue

In their Conclusion, Debtors argue that “this Panel”⁶ should reverse the lower court and rule that

again that it is the statutory duty of a Chapter 13 trustee to examine the financial situations of debtors and make a motion with the bankruptcy court to modify a debtor’s plan based on a change in annual disposable income. 11 U.S.C. §§ 704(a)(4) (listing as the trustee’s duty to “investigate the financial affairs of the debtor”). Debtors’ inflammatory arguments are unavailing. Without access to the Debtors’ post-petition tax returns, the Trustee is unable to perform his statutory duties.

⁶ Debtors previously appealed a portion of this case to the Ninth Circuit Bankruptcy Appellate Panel. That case was

the Director of the Administrative Office’s guidance on the safe handling of tax returns “are applicable to Chapter 13 case trustees and local court’s Model Chapter 13 Plan forms for the state of Arizona.” (Doc. 5 at 19). To the extent that Debtors are arguing about the safety of their tax returns, the Trustee states that all tax returns are filed through a “secure document portal,” preventing unauthorized access to the returns. (Doc. 17 at 9-10). Nevertheless, the Bankruptcy Court’s Order does not contain any legal discussion as to this argument and the Court will not consider an issue raised for the first time on appeal.

IV. Conclusion

After a *de novo* review of the Bankruptcy Court’s legal conclusions, the Court finds that the Bankruptcy Court correctly held that FRBP 2002 requires Debtors to provide notice to Harley of any amended claim in the Proposed Plan. Additionally, the Local Plan Form permissibly creates a reasonable and efficient way for the Trustee to receive Debtors’ post-petition tax returns and does so in a way that complies with FRBP 3015 and other applicable law. The Bankruptcy Court did not err in so holding. Therefore, the Court affirms the decision of the Bankruptcy Court.

dismissed as interlocutory. (Doc. 5 at 7). The Court assumes that the reference to “the Panel” is a mistaken reference to that judicial body.

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Accordingly

IT IS HEREBY ORDERED that the Order of the Bankruptcy Court is **affirmed**.

IT IS FURTHER ORDERED that the Clerk of Court shall enter judgment accordingly and dismiss this action.

Dated this 12th day of March, 2020.

/s/ Diane J. Humetewa
Honorable Diane J. Humetewa
United States District Judge

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA**

In re:	Chapter 13
JOHN ROBERT REICHARD and ERICKA RAE REICHARD, Debtors.	Case No. 2:16-bk-12633-BMW
	RULING AND OR- DER REGARDING DEBTORS' PLAN
(Filed Jul. 5, 2018)	

This matter came before the Court pursuant to the *Motion to Set Confirmation Hearing* (the “Motion”) filed by John and Ericka Reichard (the “Debtors”) (Dkt. 37); the *Response to Debtor’s Motion to Set Confirmation Hearing* (the “Response”) filed by Russell Brown, the Chapter 13 Trustee (the “Trustee”) (Dkt. 39); the *Debtors’ Reply in Support of Motion to Set Confirmation Hearing* (the “Reply”) (Dkt. 40); the Trustee’s *Supplemental Response to Debtor’s Motion to Set Confirmation Hearing* (the “Supplemental Response”) (Dkt. 44); and the *Debtors’ Final Memorandum Regarding Confirmation Hearing* (the “Final Memorandum”) (Dkt. 45).

The Motion requested a confirmation hearing on the Debtors’ proposed Chapter 13 Plan in order to resolve objections to the proposed confirmation order raised by the Trustee. The issues were briefed, as set forth above, and the Court held oral arguments on March 13, 2018, at the conclusion of which the Court

took the matter under advisement. Upon consideration of the entire record, the Court now issues its ruling.

I. Jurisdiction

The Court has subject matter jurisdiction over this proceeding pursuant to 28 U.S.C. §§ 157(a) and 1334(b), and it is a core proceeding under 28 U.S.C. § 157(b).

II. Factual and Procedural Background

The Debtors filed a voluntary petition seeking relief under Chapter 13 of the Bankruptcy Code on November 2, 2016. The Debtors filed their Chapter 13 plan (the “Plan”) shortly thereafter, and the Plan was noticed to parties in interest. (Dkts. 12, 14 & 15).

On November 29, 2016, Harley Davidson Credit Corporation (“Harley Davidson”) filed a proof of claim, in which it asserted a secured claim in the amount of \$6,255.00 and an unsecured claim in the amount of \$261.11. (Proof of Claim 2-1). The Debtors’ Plan lists the debt amount owed to Harley Davidson as being \$6,364.26, but the Plan proposes to pay Harley Davidson \$6,500 on its secured claim. (Dkt. 12 at 3).

The Plan, which was the form plan in use in the District of Arizona at the time it was filed, provides in Section (H) that “[w]hile the case is pending, the Debtor shall provide to the trustee a copy of any post-petition tax return within thirty days after filing the return with the tax agency.” The Debtors listed this as

a varying provision and referred to Section (J), which provides that the Debtors would not provide the Trustee with a copy of any post-petition tax returns, but would instead file their post-petition federal income tax returns with the Court pursuant to 11 U.S.C. § 521(f).¹ (Dkt. 12 at 5).

On January 26, 2017, the Trustee filed a plan recommendation, in which he set forth issues with the Plan, the resolution of which he deemed prerequisites to consensual confirmation. (Dkt. 18). Debtors' counsel filed three motions to extend his deadline to respond to the Trustee's plan recommendation, and on August 18, 2017, the Debtors submitted a proposed stipulated order of confirmation to the Trustee (the "Proposed SOC"). (See Dkts. 21, 24, 26, 32).

The Proposed SOC provides in relevant part:

(A) INCOME SUBMITTED TO THE PLAN.

....

....

(1) Future Earnings or Income.....

The Debtors shall file copies of their federal income tax returns for post-petition years **2017 – 2020** within 30 days of filing them with the Court pursuant to 11 U.S.C. § 521(f). The purpose is to assist the Trustee in determining any change in Debtors' annual disposable income. Postpetition state income tax returns

¹ 11 U.S.C. §§ 101 *et seq.* will hereinafter be referred to as the "Bankruptcy Code" or "Code."

will be handled pursuant to the final appellate decision rendered in case number 2-14-bk-7968-BKM.

(C) CLASSIFICATION AND TREATMENT OF CLAIMS.

....

....

(3) Claims Secured by Personal Property:

....

(c) **Harley-Davidson Credit Corp.**, secured by a lien in a 2008 *Harley-Davidson* FXDC Dyna Super Glide, shall be paid a secured claim of **\$6,255.00** with 7% interest. The balance of the debt shall be classified as unsecured.

(Dkt. 39 at Ex. A).

The Trustee rejected the Proposed SOC on several grounds, including that the tax return paragraph did not provide for returns to be provided to the Trustee and that the amount to be paid to Harley Davidson differed from the treatment set forth in the Plan. Debtors' counsel then filed the Motion requesting this Court to determine the issues relating to the tax returns and the treatment of Harley Davidson.

After Debtors' counsel filed the Motion, the District of Arizona adopted new local rules relating to Chapter 13 cases, which became effective December 1, 2017 ("Revised Local Chapter 13 Rules"). *See Local*

Rules of Bankruptcy Procedure for the District of Arizona – 2084 Series. Such rules apply to all cases filed after November 30, 2017, and all pending cases, unless the Court finds such application is not just and practicable. General Order No. 17-1. Rule 2084-4 of the Revised Chapter 13 Local Rules mandates the use of Local Form 2084-4 (the “Local Plan Form”), which includes the following provision related to post-petition tax returns:

While the case is pending, the Debtor shall provide to the Trustee a copy of any post-petition tax return within 14 days after filing the return with the tax agency.

At the hearing on March 13, 2018, the parties also raised an issue relating to the secured claim of Lakeview Loan Servicing and its objection to the Plan. Given that this issue was not set for hearing, and that the parties indicated that the issue was likely to be resolved, the matter is not before the Court at this time, but would need to be resolved prior to confirmation of a plan. At the hearing the Debtor and the Trustee also resolved issues pertaining to the language in paragraph D of the Proposed SOC; therefore, this issue is not before the Court, but the agreed upon language would need to be included in a final order confirming a plan.

III. Issues

1. Whether the order of confirmation may propose treatment consistent with Harley Davidson’s filed

proof of claim, but different than the treatment set forth in the Debtors' Plan.

2. Whether the Local Rules and Local Plan Form may require the Debtors to provide copies of their post-petition tax returns directly to the Trustee.

IV. Legal Analysis and Conclusions of Law

1. The Harley Davidson Claim

The Debtors argue that they are entitled to pay Harley Davidson's secured claim in the amount asserted by Harley Davidson in its proof of claim. The Trustee contends that the Debtors must provide Harley Davidson with notice if they wish to modify the amount to be paid to Harley Davidson through their Plan.

Code § 1323(a) allows Chapter 13 debtors to modify their plans at any time before confirmation. The plan as amended then becomes the plan. 11 U.S.C. § 1323(b). Federal Rule of Bankruptcy Procedure 2002(a)(5)² requires that all creditors be given at least 21 days' notice of the deadline to accept or reject a proposed modification.³ *See also In re Franklin*, 459 B.R. 463, 465 (Bankr. D. Nev. 2011) ("The authorities are in general agreement that any modification resets the

² The Federal Rules of Bankruptcy Procedure will hereinafter be referred to as "FRBP" or "Federal Rules."

³ The Federal Rules of Bankruptcy Procedure will hereinafter be referred to as "FRBP" or "Federal Rules."

time for objection, and thus the modified plan must be renoted.”).

The Debtors’ Plan, as noticed out, and not objected to by Harley Davidson, proposed to pay Harley Davidson \$6,500 on account of its secured claim. The proposed confirmation order reduces the amount that Harley Davidson would receive on its secured claim to \$6,255. Harley Davidson has not been given notice of this modification. Though this modification appears to be a correction given that Harley Davidson filed a secured proof of claim in the amount of \$6,255, Harley Davidson is nonetheless entitled to notice of the amendment and an opportunity to object, as the proposed alteration will affect Harley Davidson’s rights.

Based on the foregoing, it is this Court’s determination that an amended plan is required which gives notice and opportunity to object, or alternatively, Harley Davidson may consent by stipulation to a confirmation order.

2. The Local Plan Form’s Requirement that Debtors Submit Post-Petition Tax Returns to the Trustee

The Debtors argue that the Local Plan Form violates the Bankruptcy Code and the Federal Rules on the basis that the Trustee is required to follow Code §§ 521(f) and (g) in order to obtain access to post-petition tax returns. The Trustee argues that the Local Rules and Local Plan Form permissibly require the

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Debtors to provide copies of their post-petition tax returns directly to him.

Federal Rule 9029 empowers bankruptcy courts to make and amend local rules. Rule 9029 provides, in part, as follows:

(a) Local bankruptcy rules

(1) . . .

A district court may authorize the bankruptcy judges of the district, subject to any limitation or condition it may prescribe and the requirements of 83 F.R.Civ.P., to make and amend rules of practice and procedure which are consistent with – but not duplicative of – Acts of Congress and these rules and which do not prohibit or limit the use of the Official Forms. Local rules shall conform to any uniform numbering system prescribed by the Judicial Conference of the United States.

(2) A local rule imposing a requirement of form shall not be enforced in a manner that causes a party to lose rights because of a nonwillful failure to comply with the requirement.

FRBP 9029.

The language in Federal Rule of Civil Procedure 83 is similar to the language in FRBP 9029, but imposes the additional requirement that local rules may only be made or amended “[a]fter giving public notice and an opportunity for comment.”

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In December 2017, the U.S. Supreme Court, in accordance with 28 U.S.C. § 2075, amended FRBP 3015. Pursuant to FRBP 3015, as amended, Official Form 113 (the “National Plan Form”) must be used in all Chapter 13 cases, except to the extent a Local Form that complies with FRBP 3015.1 has been implemented at the district level.

The District of Arizona chose to adopt the Local Plan Form, which is compliant with FRBP 3015.1. Pursuant to Local Rule 2084-4 and General Order No. 17-1, the Local Plan Form “must be used for all original, amended, or modified plans” in all pending Chapter 13 cases, unless the Court finds that such application is not just and practicable. “Varying provisions must be specific and not inconsistent with the Code, FRBP or Local Rules.” LR 2084-4(a). The Local Plan Form requires Chapter 13 debtors to submit post-petition tax returns directly to the trustee.⁴ The Revised Local Chapter 13 Rules were published with notice and an opportunity for public comment before adoption.

In order to be valid, a local bankruptcy rule must: (1) be consistent with Acts of Congress and the Federal Rules; (2) be more than merely duplicative of Acts of Congress and the Federal Rules; and (3) not prohibit or limit the use of Official Bankruptcy Forms. *In re Healthcentral.com*, 504 F.3d 775, 784 (9th Cir. 2007) (adopting the test articulated in *In re Steinarcher*, 283

⁴ It should be noted that the National Plan Form in section 2.3 provides in part, as an option, that “Debtor(s) will supply the trustee with a copy of each income tax return filed during the plan term within 14 days of filing the return. . . .” Official Form 113.

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B.R. 768 (B.A.P. 9th Cir. 2002)). The Revised Local Chapter 13 Rules meet these requirements.

The provision in the Local Plan Form that requires Chapter 13 debtors to submit post-petition tax returns directly to the trustee is consistent with the Code and Federal Rules, as well as the National Plan Form. Code § 1302(b)(1), which incorporates § 704(a)(4) of the Code, requires trustees to “investigate the financial affairs of the debtor[.]” The Code also imposes a number of duties on debtors, including the duty to “cooperate with the trustee as necessary to enable the trustee to perform [his] duties. . . .” 11 U.S.C. § 521. Neither the Code nor Federal Rules address accessibility to or disclosure of debtors’ post-petition state tax returns, but the Code imposes a duty on debtors to supply their post-petition federal tax returns under certain circumstances. *See* 11 U.S.C. § 521(0)(1).

Code § 521(f)(1) provides:

At the request of the court, the United States trustee, or any party in interest in a case under chapter 7, 11, or 13, a debtor who is an individual shall file with the court – at the same time filed with the taxing authority, a copy of each Federal income tax return required under applicable law (or at the election of the debtor, a transcript of such tax return) with respect to each tax year of the debtor ending while the case is pending under such chapter[.]

“[T]he purpose of [Code] § 521(0) . . . appears to be to allow interested parties like [the] Trustee to monitor a

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debtor's financial condition during the pendency of the chapter 13 case and to seek plan modification under [Code] § 1329 if there are material increases in net income that can be captured for contribution." *In re Romeo*, No. BAP AZ-17-1215-BLKU, 2018 WL 1463850, at *4 (B.A.P. 9th Cir. Mar. 23, 2018). A trustee's use of debtors' tax return information for purposes of evaluating whether a plan modification is warranted is consistent with the Code. *Id.* (citing *Fridley v. Forsythe (In re Fridley)*, 380 B.R. 538, 544 (B.A.P. 9th Cir. 2007); *Danielson v. Flores (In re Flores)*, 735 F.3d 855, 860 n.7 (9th Cir. 2013); *In re Escarzaga*, 573 B.R. 219, 224 (B.A.P. 9th Cir. 2017); *In re King*, 2010 WL 4363173, at *3 (Bankr. D. Colo. Oct. 27, 2010); *In re Self*, 2009 WL 2969489, at *5 (Bankr. D. Kan. Sept. 11, 2009); *In re Slusher*, 359 B.R. 290, 304 (Banks. D. Nev. 2007)).

Although Code § 521(f) addresses a means by which a trustee can gain access to post-petition federal tax returns, Code § 521(f) does not provide the exclusive mechanism by which a trustee may obtain access to such tax returns. A trustee may, for example, apply for a Rule 2004 examination, file a motion under § 521(a)(3), or seek to obtain post-petition tax returns pursuant to Rule 7034 in the context of an adversary. Cf. *In re Parker*, 488 B.R. 794, 798-99 (Bankr. N.D. Ga. 2013) (recognizing that tax returns can be discoverable documents for purposes of FRBP 7034); *In re Collins*, 393 B.R. 835, 837 (Bankr. E.D. Wis. 2008) (recognizing a creditor's ability to use FRBP 2004 to require a debtor to produce tax returns). Further, although the Ninth Circuit B.A.P. in the *Romeo* case found that Code

§ 521(g) was not a basis for turnover of post-petition state tax returns, it clearly recognized that the trustee might obtain such returns by other means. *In re Romeo*, 2018 WL 1463850, at *6.

Chapter 13 was intended to provide individual debtors with a streamlined process for reorganizing their debts. *In re Vega-Lara*, No. 17-52553-CAG, 2018 WL 2422427, at *5 (Bankr. W.D. Tex. May 4, 2018) (quoting *In re Solitro*, 382 B.R. 150, 152 (Bankr. D. Mass. 2008)). Uniform plans, like the Local Plan Form, allow Chapter 13 trustees, creditors' attorneys, and debtors' attorneys to more quickly, efficiently, and inexpensively review and prepare plans. *See id.* (quoting *In re Solitro*, 382 B.R. 150, 152 (Banks. D. Mass. 2008)).

The Trustee has a statutory duty to investigate the financial affairs of the Debtors. In order to fulfill this duty, he needs to have the ability to readily access debtors' post-petition tax returns, in order to monitor changes in disposable income. These tax returns can provide a basis for proposing plan modifications, or requiring the filing of amended schedules. It would be cost prohibitive to require trustees to file a motion every year that a case is pending, in order to obtain post-petition tax returns in every case, given the number of cases each trustee handles. The Local Plan Form effectively balances the debtor's duty to file post-petition federal tax returns with the trustee's duty to ensure that the debtor is complying with the Code. The Local Plan Form provision at issue here permissibly streamlines the procedure by which a trustee obtains

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the debtors' post-petition tax returns, and promotes cost efficiencies and efficient administration.

To the extent the Debtors contend that enforcing the Local Plan Form provision at issue here deprives them of rights or violates their privacy, the Court finds that the Debtors have failed to prove any deprivation or violation. The Debtors do not allege that the Trustee is seeking their post-petition tax returns for an improper purpose. In fact, it appears that the Debtors intent in objecting to this local plan provision is to purposely increase the cost to the Trustee of obtaining an important source of financial information, the tax returns, and to avoid the disclosure of any changes in their projected disposable income, in order to prevent the Trustee from seeking modification pursuant to Code § 1329. Under the circumstances, any encroachment on the Debtors' rights is outweighed by the Trustee's competing duty to investigate and analyze the financial affairs of the Debtors and to seek to modify their plan, if appropriate. There is no real distinction between the Local Plan Form provision that requires debtors to provide the trustee with copies of their federal tax returns and the Code's requirement that debtors file these returns with the Court while the case is pending. The Debtors' objection raises a distinction without a difference. Further, the turnover of post-petition state tax returns causes no greater infringement upon debtors, given the requirement for turnover of the federal tax returns.

Upon consideration of the foregoing and the entire record, it is the determination of the Court that the

Debtors are required to provide the Trustee with copies of their post-petition tax returns pursuant to the Local Rules and Local Plan Form.

V. Conclusion

The Court finds that the Debtors must provide Harley Davidson with notice of their proposed change to the treatment of Harley Davidson's claim, or they must obtain Harley Davidson's consent to the stipulated order confirming the Plan. Additionally, the Court finds that use of the Local Plan Form is mandatory in this case and permissibly requires the Debtors to submit copies of their post-petition tax returns directly to the Trustee.

Wherefore, based upon the foregoing and for good cause shown;

IT IS ORDERED that the Trustee's objections to confirmation of the Debtors' Plan, as submitted, are sustained, and confirmation is denied.

IT IS FURTHER ORDERED that the Debtors have thirty (30) days from entry of this order to file an amended plan consistent with this ruling.

DATED AND SIGNED ABOVE.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In re: Chapter 13
JOHN ROBERT REICHARD, Case No.
and 2:16-bk-12633-BMW
ERICKA RAE REICHARD,
Debtor(s). **STIPULATED OR-
DER CONFIRMING
FIRST AMENDED
CHAPTER 13 PLAN**

(Filed Mar. 12, 2019)

The Chapter 13 First Amended Plan having been properly noticed out to creditors and any objection to confirmation having been resolved,

IT IS ORDERED confirming the Chapter 13 First Amended Plan (“Plan”) of the Debtors as follows:

(A) **INCOME SUBMITTED TO THE PLAN.** Debtors shall submit the following amounts of future income to the Trustee for distribution under the Plan.

(1) Future Earnings or Income. Debtors shall make the following monthly Plan payments:

<u>Months</u>	<u>Amount</u>
1-10	\$1,165.00
11-60	\$1,190.00

The payments are due on or before the 2nd day of each month commencing December, 2016. Debtors are advised that when payments are remitted late, additional interest may accrue on secured debts which may

result in a funding shortfall at the end of the Plan term. Any funding shortfall must be cured before the plan is deemed completed.

The Debtor(s) shall provide to the Trustee copies of their federal and state income tax returns for post-petition years 2018 – 2020 within **14** days of filing them. The purpose is to assist the Trustee in determining any change in Debtor(s)' annual disposable income.¹

(2) Other Property. **NONE**

(B) DURATION. This Plan shall continue for **60** months from the first regular monthly payment described in Paragraph (A)(1) above. If at any time before the end of the Plan period all claims are paid, then the Plan shall terminate. In no event will the term of the Plan be reduced to less than 60 months, exclusive of any property recovered by the Trustee, unless all allowed claims are paid in full.

(C) CLASSIFICATION AND TREATMENT OF CLAIMS. Claims shall be classified as listed below.

¹ Petitioner(s) expressly reserve the right to assert their Thirteenth Amendment privilege from the U.S. Constitution against involuntary servitude, should the Chapter 13 Trustee attempt to modify their plan unilaterally and increase their monthly plan payments. The Petitioners assert that they have not waived their Constitutional Right against involuntary servitude by voluntarily filing their bankruptcy petition. *In re Clemente*, 409 B.R. 288, 293 (Bankr. D. NJ 2009). Petitioners further assert, a Chapter 13 Trustee demanding debtors assist him in determining changes to their annual disposable income, is barred by *In re Anderson*, 21 F.3d 355, 358 (9th Cir. 1994).

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The Plan and this Order shall not constitute an informal proof of claim for any creditor. This Order does not allow claims. Claims allowance is determined by § 502 and the Federal Rules of Bankruptcy Procedure. The Trustee shall receive the percentage fee on the Plan payments pursuant to 28 U.S.C. § 586(e), then the Trustee will pay secured creditors or allowed claims in the following order:

(1) Administrative expenses:

Attorney Fees. **David Allegrucci**, shall be allowed total compensation of **\$00.00** through the plan. Counsel received \$00.00 prior to filing this case and will be paid outside the Plan by *Metlife Insurance Company dba Hyatt Legal Plans*. Any fee received above \$1,500.00 will be disclosed in an amended Rule 2016(b) notice.

(2) Claims Secured by Real Property:

(a) **Lake View Loan Servicing, LLC**, secured by a first deed of trust in the Debtor(s)' residence, shall be paid the prepetition arrearage of **\$00.00** with 0% interest. The parties entered a loan modification agreement which dealt with the arrears set forth within proof of claim 24-1 and thereby resolves the objection to confirmation at case docket #42. Regular post-petition payments will be made directly by the Debtor(s) to the secured creditor.

- (b) ***Cortessa Community Association***, secured by a statutory lien in the Debtors' residence for unpaid assessments, shall be paid the prepetition arrearage of **\$1,267.40** with **0%** interest. All post-petition payments shall be paid directly by the Debtors to the HOA..
- (3) Claims Secured by Personal Property:
 - (a) ***Alphera Financial/BMW Financial Services, LLC***, secured by a lien in a 2016 *Dodge Durango*, shall be paid **57** monthly conduit payments in the amount of **\$654.19** each month for a total of **\$37,257.08** through the Trustee towards a total secured claim of \$37,257.08 accruing 7.750% interest. Following completion of the Plan, the Debtor(s) shall resume direct payments to the lender through the end of the contract period, unless the Debtor(s) elect to surrender the aforementioned vehicle or said claim is paid in full at that time.
 - (b) ***Ally Financial***, secured by a lien in a 2013 *Chevrolet Equinox*, shall be paid a secured claim of **\$13,570.00** with **4.90%** interest. The creditor will receive adequate protection payments of **\$135.00** per month. The balance of the debt shall be classified as unsecured.
 - (c) ***Harley-Davidson Credit Corp.***, secured by a lien in a 2008 *Harley-Davidson FXDC Dyna Super Glide*, shall be paid a secured claim of **\$6,255.00** with **7%**

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interest. The creditor will receive adequate protection payments of **\$ 65.00** per month. The balance of the debt shall be classified as unsecured.

(4) Unsecured Priority Claims:

NONE

(5) Surrendered Property.

Upon confirmation of this plan or except as otherwise ordered by the Court, bankruptcy stays are lifted as to collateral to be surrendered. Such creditor shall receive no distribution until the creditor timely files a claim or an amended proof of claim that reflects any deficiency balance remaining on the claim. Assuming the creditor has an allowed proof of claim, should the creditor fail to file an amended claim consistent with this provision, the Trustee need not make any distributions to that creditor. Debtors surrender the following property:

The Debtors will surrender **None** in which **NA** has a security interest.

(6) Other Provisions: **NONE**

(7) Unsecured Nonpriority Claims. Claims allowance is determined by § 502 and the Federal Rules of Bankruptcy Procedure. Allowed unsecured claims shall be paid pro rata the balance of the payments under the Plan and any unsecured debt balance remaining unpaid upon completion of the Plan may be discharged as provided in 11 U.S.C. § 1328.

(D) **EFFECTIVE DATE AND VESTING.** The effective date of the Plan shall be the date of this Order. Property of the estate **remains property of the bankruptcy estate** upon confirmation, subject to the Trustee asserting a claim to any additional property of the estate pursuant to 11 U.S.C. § 1306. Said claim of the Trustee also subject to the holding of *In re Burgle*, 239 B.R. 406, 410 (BAP 9th Cir. 1999) as to when a postpetition asset has 5 to be turned over to a Chapter 13 Trustee by the debtors. The Debtor(s) further reserve the right to dismiss one or both of them from this proceeding pursuant to 11 U.S.C. 5 § 1307(b) if the postpetition property is sufficient to allow them to continue to reorganize their finances outside the bankruptcy process. Should one or both of the debtors 7 exercise their statutory right of dismissal, based upon future events, they **reserve the right to assert** at that time such a dismissal is in good faith because it is based upon 3 events that could not be projected at the time of confirmation rendering *In re Rosson*, 545 F.3d 764 (9th Cir. 2008) inapplicable to such a request. Likewise, **the Debtors reserve the right to assert that** such future unknown property interests are not “known or) virtually certain information about the debtor’s future income or expenses” requiring an adjustment to their confirmed plan of reorganization. *In re Lanning*, 130 S.Ct. 2464, 2475 (2010).

ORDER SIGNED ABOVE

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Approved as to Form and Content By:

[LOGO] 2019.03.08
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Russell Brown, Trustee

/s/ Joseph J. Tirello, Jr.
Joseph J. Tirello, Jr. Esq.
Attorney for *LakeView Loan Servicing, LLC*

/s/ David Allegrucci
David Allegrucci
Attorney for Petitioner(s)

The debtor(s) certify: All required State and Federal income tax returns have been filed. No domestic support obligation is owed or, if owed, such payments are current since the filing of the Petition.

Debtor

Debtor

David Allegrucci
Attorney for Petitioner(s)

The debtor(s) certify: All required State and Federal income tax returns have been filed. No domestic

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support obligation is owed or, if owed, such payments are current since the filing of the Petition.

John Reichard
Debtor

Ericka Reichard
Debtor

[Notice Recipients Omitted]

Subject: ^_NACBA^_: Local Rule Requires Automatic Submission of Tax Returns During Plan

Date: 5/28/2020 8:28:37 AM US Mountain Standard Time

From: nacba@nacba.com

To: alopllc@aol.com

COURT: Local Rule Requires Automatic Submission of Tax Returns During Plan

The Arizona District Court found that the District of Arizona's Local Plan Form for chapter 13 bankruptcies under which all debtors must automatically submit their tax returns during the life of their plans does not conflict with the Code. *Reichard v. Brown (In re Reichard)*, No. 19-2010 (D. Ariz. March 12, 2020) (unpublished).

In 2017, Fed. R. Bankr. P. 3015 was amended to provide that a chapter 13 debtor must use federal Official Form 113, unless there is a local form governing chapter 13 plans. Part 2.3 of the Official Form 113 offers three alternatives for dealing with a debtor's tax returns during the course of his plan, the second of which requires the debtor to provide all tax returns filed during the plan to the trustee within 14 days of filing with the taxing authority. In response, the District of Arizona amended its own Local Plan Form to mirror that second alternative.

Local Rule Requires Automatic Submission of Tax Returns During Plan

Posted by NCBRC – May 14, 2020

The Arizona District Court found that the District of Arizona's Local Plan Form for chapter 13 bankruptcies under which all debtors must automatically submit their tax returns during the life of their plans does not conflict with the Code. *Reichard v. Brown (In re Reichard)*. No. 19-2010 (D. Ariz. March 12, 2020) (unpublished).

In 2017, Fed. R. Bankr. P. 3015 was amended to provide that a chapter 13 debtor must use federal Official Form 113, unless there is a local form governing chapter 13 plans. Part 2.3 of the Official Form 113 offers three alternatives for dealing with a debtor's tax returns during the course of his plan, the second of which requires the debtor to provide all tax returns filed during the plan to the trustee within 14 days of filing with the taxing authority. In response, the District of Arizona amended its own Local Plan Form to mirror that second alternative.

In this case, the trustee objected to the debtors' proposed plan because it did not provide for automatically turning over their tax returns. The bankruptcy court sustained the objection and ordered the debtors to include the provision in their plan. They appealed to the district court.

The central issue on appeal was whether the requirement in the local rule that debtors automatically file their tax returns during the course of their chapter 13

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plan conflicts with the Code. The debtors pointed to section 521(f), which provides that “upon the request of the court,” the trustee, or any party in interest, debtors in bankruptcy shall submit post-petition tax returns at the same time they file the returns with the taxing authority. They argued that, under section 521(f), the trustee must make a separate request for each tax return.

The district court disagreed. The court reasoned that nothing in section 521(f) precludes districts from creating local rules with a tax filing requirement and, in fact, the court noted that similar rules are widespread among Ninth Circuit districts. In affirming, the court found that the local rule facilitates the trustee’s obligations under sections 704(a)(4) and 1329(a)(1), to investigate a debtor’s finances and seek modification of a chapter 13 plan if the debtor’s ability to pay increases post-confirmation. Furthermore, as a practical matter, the court found that compliance with section 521(f), requiring trustees to seek tax returns each year for each debtor is cumbersome and costly.

The court rejected the debtor’s argument that the Local Plan Form conflicts with the Code because section 521(f) sets out the only method for obtaining a debtor’s post-confirmation tax returns. The court noted that tax documents have been found to be discoverable in adversary proceedings and for purposes of a Rule 2004 examination without invocation of section 521(f). It concluded that, while section 521(f) is one method of obtaining a debtor’s tax returns, it is not the only available method and that “the Local Plan Form

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permissibly creates a reasonable and efficient way for the Trustee to receive Debtors' post-petition tax returns and does so in a way that complies with FRBP 3015 and other applicable law." It affirmed.

The debtor has appealed the decision to the Ninth Circuit Court of Appeals, No. 20-15661.

Reichard D Ariz March 2020

Tags: Plan confirmation

“SUBCHAPTER I—GENERAL PROVISIONS

“§ 1001. Trustee

“(a) APPOINTMENT.—Except as provided by section 1.052, in a case under this chapter, the United States trustee—

“(1) shall appoint 1 disinterested individual to serve as trustee from the panel of private trustees under section 586(a) of title 28 or a standing trustee under subsection (b) of that section who meets the requirements of a trustee under section 522 of this title; or

“(2) may serve as trustee.

“(b) DUTIES.—The trustee shall—

“(1) perform the duties required under paragraphs (2) through (5) and (7) of section 704;

“(2) appear and be heard at any hearing that concerns—

“(A) the value of property subject to a lien; or

“(B) confirmation of a repayment plan, a residence plan, or a property plan;

“(3) advise, other than on legal matters, and assist the debtor in the formulation of, and performance under, any plan;

* * *

Regulations) for a loan. of the most similar duration and rate type; and

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“(2) for the purpose of subsection (d)(2), the current average prime offer rate for motor vehicle financing of the most similar duration and rate type, as determined by the Bureau of Consumer Financial Protection under section 201(e) of the Consumer Bankruptcy Reform Act of 2020.

“§ 1025. Payments under a repayment plan

“(a) DUTIES OF TRUSTEE.—The trustee shall—

“(1) collect and be accountable for any future income of the debtor that is designated for a payment to a creditor under a repayment plan;

“(2) accept and be accountable for any property of the estate tendered by the debtor pursuant to a repayment plan under section 1022(a)(1)(A)(i)(II); and

“(3) reduce to money and be accountable for any property of the estate tendered by the debtor under the repayment plan as expeditiously as is compatible with the best interests of the parties in interest.

“(b) PAYMENTS.—

“(1) In general.—Except as provided by section 1027 and unless the court orders otherwise, not

* * *

turn) for the most recent tax year ending immediately before the commencement of the

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case and for which a Federal income tax return was filed.

“(C) A W-2 form issued by each employer for the tax year preceding the year the petition is filed.

“(D) Other evidence of payment received within 60 days before the date of the filing of the petition that establishes the debtor’s income.

“(2) If the debtor’s annual income creates or increases the minimum payment obligation as described in clause (ii) or (iii) of section 101(54)(B) of this title, the debtor shall, to the extent not already provided under paragraph (1), provide to the trustee as documentation of income—

“(A) a copy of the Federal income tax return required under applicable law (or at the election of the debtor, a transcript of such return) for the most recent tax year ending immediately before the commencement of the case and for which a Federal income tax return was required and filed; and

* * *

“(2) the debtor is not required to file the statement of annual income required by subsection (a)(1)(B)(v).

“(d) In a case under chapter 7 or 11:

“(1) The debtor shall provide—

“(A) not later than 7 days before the date first set for the first meeting of creditors,

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to the trustee a copy of the Federal income tax return required under applicable law (or at the election of the debtor, a transcript of such return) for the most recent tax year ending immediately before the commencement of the case and for which a Federal income tax return was filed; and

“(B) at the same time the debtor complies with subparagraph (A), a copy of such return (or if elected under subparagraph (A), such transcript) to any creditor that timely requests such copy.

“(2) If the debtor fails to comply with subparagraph (A) or (B) of paragraph (1), the court shall dismiss the case unless the debtor demonstrates that the failure to so comply is due to circumstances beyond the debtor's control.

“(3) If a creditor requests a copy of such tax return or such transcript and, if the debtor fails to provide a copy of such tax return or such transcript to such creditor, at the time the debtor provides such tax return or such transcript to the trustee, the court shall dismiss the case unless the debtor demonstrates that the failure to provide a copy of such tax return or such transcript is due to circumstances beyond the debtor's control.

“(e) Failure by the debtor to disclose a cause of action in a schedule required to be filed under this section shall not alone be grounds to dismiss a lawsuit brought to enforce the cause of action.

“(f) If requested by the United States trustee or by the trustee, the debtor shall provide—

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“(1) a document that establishes the identity of the debtor, including a driver’s license, passport, or other document that contains a photograph of the debtor; or

“(2) such other personal identifying information relating to the debtor that establishes the identity of the debtor.

“(g) At the request of the court, the trustee, or the United States trustee, a debtor under chapter 10 or 11 who is an individual shall file with the court—

“(1) at the same time filed with the taxing authority, a copy of each Federal income tax return required under applicable law (or at the election of the debtor, a transcript of such tax return) with respect to each tax year of the debtor ending while the case is pending under such chapter;

“(2) at the same time filed with the taxing authority, each Federal income tax return required under applicable law (or at the election of the debtor, a transcript of such tax return) that had not been filed with such authority as of the date of the commencement of the case and that was subsequently filed, for any tax year of the debtor ending in the 3-year period ending on the date of the commencement of the case; and

“(3) a copy of each amendment to any Federal income tax return or transcript filed with the court under paragraph (1) or (2).

“(h)(1) Notwithstanding any other provision of this title, if the debtor fails to file a tax return that becomes due after the commencement of the case or to

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properly obtain an extension of the due date for filing such return, the taxing authority may request that the court enter an order converting or dismissing the case.

“(2) If the debtor does not file the required return or obtain the extension referred to in paragraph (1) within 90 days after a request is filed by the taxing authority under that paragraph, the court shall convert or dismiss the case, whichever is in the best interests of creditors and the estate.”.

(ff) EXEMPTIONS.—

(1) IN GENERAL.—Section 522 of title 11, United States Code, is amended by striking subsections (a) through (q) and inserting the following:

“(a) In this section—

“(1) the term ‘conforming loan limit’ means that applicable limitation for the debtor’s county of residence governing the maximum original principal obligation for a mortgage secured by a single-family residence, as determined and adjusted annually under section 302(b)(2) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717(b)(2)) and section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2));

“(2) the term ‘dependent’ includes spouse, whether or not actually dependent; and

“(3) the term ‘value’ means value—

Guide to Judiciary Policy

Vol. 4: Court and Case Management

Ch. 8: Bankruptcy Case Policies

§ 810 Overview

This chapter contains national judiciary policies regarding bankruptcy cases that were adopted either by the Judicial Conference of the United States or by the Director of the Administrative Office of the U.S. Courts (AO). They include:

- Procedures adopted by the Judicial Conference regarding the chapter 7 fee waiver provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) (**see: § 820**, below); and
- Director's Guidance Regarding Tax Information under 11 U.S.C. § 521 (**see: § 830**).

Note: This guidance is available on uscourts.gov, to which local courts should direct the public and members of the local bar.

§ 815 Applicability

This chapter applies to the bankruptcy courts.

Last revised (Transmittal 04-017) April 10, 2018

§ 830 Guidance for Protection of Tax Information

The Director of the AO promulgates this Guidance Regarding Tax Information under 11 U.S.C. § 521 as required by Section 315(c) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the Act) to safeguard the confidentiality of tax information, including tax returns, transcripts of returns, amendments to returns and any other document containing tax information provided by the debtor under 11 U.S.C. § 521.

§ 830.10 Debtor's Duty to Provide Tax Information

- (a) Sections 521(e) and (f) of the Bankruptcy Code, which governs the provision of tax information, applies only to individual debtors filing under chapter 7, 11 or 13 of the Bankruptcy Code.
- (b) Section 521(e)(2) requires a debtor to provide the trustee and any requesting creditor a copy or transcript of the federal income tax return required under applicable law for the most recent tax year ending immediately before the commencement of the case if filed.
- (c) Fed. R. Bankr. P. 4002(b)(5) provides that the debtor's obligation to provide tax information to the trustee and creditors is subject to these procedures.
- (d) Section 521(f) requires a debtor, on the request of the court, the United States trustee, or any party in interest, **to file with the court** certain tax information filed with the

taxing authority during the pendency of the bankruptcy case.

§ 830.20 Restricted Access to Tax Information

- (a) For tax information to be filed with the court, it must be entered into a court's CM/ECF system by selection of the "tax information" event from the CM/ECF event list.
 - (1) This event limits access to the filed tax information to those users assigned a "court" log in (i.e., judicial officers and court employees).
 - (2) All other users (including PACER users) will have access to a docket event indicating that tax information has been filed, but will not have access to the tax information.
- (b) No tax information filed with the bankruptcy court or otherwise provided by the debtor should be available to the public via the Internet, PACER, or CM/ECF.

§ 830.30 Tax Information Disclosure Requests

To gain access to a debtor's tax information under 11 U.S.C. § 521(f), the United States trustee or bankruptcy administrator, case trustee, and any party in interest, including a creditor, must follow the procedures set forth below:

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- (a) A written request that a debtor file copies of tax returns with the court under 11 U.S.C. § 521(f) must be filed with the court and served on the debtor and debtor's counsel, if any.
- (b) To obtain access to debtor's tax information that is filed with the bankruptcy court, the movant must file a motion with the court, which should include:
 - (1) a description of the movant's status in the case, to allow the court to ascertain whether the movant may properly be given access to the requested tax information;
 - (2) a description of the specific tax information sought;
 - (3) a statement indicating that the information cannot be obtained by the movant from any other source; and
 - (4) a statement showing a demonstrated need for the tax information.
- (c) An order granting a motion for access to tax information should include language advising the movant that the tax information obtained is confidential and should condition dissemination of the tax information as appropriate under the circumstances of a particular case. At the discretion of the court, the order may state that sanctions may be imposed for improper use, disclosure, or dissemination of the tax information.

§ 830.40 Approved Access to Tax Information

- (a) Local courts have authority to determine procedures, the details of which are within the discretion of the court, for transmitting the tax information to the movant when access has been granted. Possible methods include mailing a hard copy, or developing procedures to view tax information at the clerk's office.
- (b) The transmission of the tax information to the movant, by whatever means the court deems appropriate, should be recorded as a docket event in CM/ECF so that the docket will reflect that the court has taken the action necessary to effect the provisions of its order granting access.

§ 830.50 Required Redaction of Debtor Tax Information

- (a) The following redaction requirements apply to all tax information provided in accordance with section 521 of the Bankruptcy Code:
- (b) Debtors providing tax information under 11 U.S.C. § 521 should redact personal information according to the criteria set forth in Fed. R. Bankr. P. 9037. A debtor should therefore redact personal identifiers in any tax information required to be filed with the court or provided to the trustee or creditor(s), in either electronic or paper form, as follows:

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(1) Social Security Numbers

If an individual's social security number is included, only the last four digits of that number should appear.

(2) Individual Taxpayer Identification Number (ITIN)

If an individual taxpayer has an ITIN instead of a social security number, only the last four digits of the ITIN should appear.

(3) Names of Minor Children

If a minor child is identified, only the child's initials should appear.

(4) Dates of Birth

If an individual's date of birth is included, only the year should appear.

(5) Financial Account Numbers

If financial account numbers are provided, only the last four digits of these numbers should appear.

- (c) Court employees are not responsible for redacting any of the personal identifying information contained in documents filed with the court. The responsibility for redacting personal identifiers rests solely with the debtor.
- (d) Failure to follow these procedures waives the protection afforded by them.

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- (1) Failure to select the “tax information” event in the CM/ECF system to file a document containing tax information with the court will make the document available to the public via the internet, PACER, or CM/ECF.
- (2) Filing a document containing unredacted personal information with the court waives the protection of Fed. R. Bankr. P. 9037. The clerk of court is not required to review documents filed with the court, and so the responsibility to redact filings rests with the counsel, parties, and others who file such documents. **See: Fed. R. Bankr. P. 9037(g) advisory committee's note.**

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Attorney for Petitioner(s)**

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA**

In re	Case No.
JOHN ROBERT REICHARD, and ERICKA RAE REICHARD, Debtor(s).	2-16-bk-12633-BMW
SSN xxx-xx-3063 SSN xxx-xx-8225 18128 W. Mission Lane Waddell, Arizona 85355	CHAPTER 13 PLAN AND APPLICATION FOR PAYMENT OF ADMINISTRATIVE EXPENSES <input checked="" type="checkbox"/> Original <input type="checkbox"/> Amended <input type="checkbox"/> Modified <input type="checkbox"/> Plan payments include post-petition mortgage payments

This Plan may affect creditor rights. **If you object to the treatment of your claim as proposed in this Plan, you must file a written objection by the deadline set forth in a Notice of Date to File Objections to Plan served on parties in interest.** If this is a joint case, then “Debtor” means both Debtors. This plan does not allow claims or affect the timeliness of any claim. To receive payment on your claim,

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you must file a proof of claim with the Bankruptcy Court, even if this Plan provides for your debt. The applicable deadlines to file a proof of claim were specified in the Notice of Commencement of Case. Except as provided in § 1323(c), a creditor who disagrees with the proposed treatment of its debt in this Plan must timely file an objection to the Plan.

See Section (J), Varying Provisions.

This is an Amended or Modified Plan. The reasons for filing this Amended or Modified Plan are: _____

(A) Plan Payments and Property to be Submitted to the Plan.

(1) Plan payments start on December 2, 2016. The Debtor shall pay the Trustee as follows: **\$1,165.00** each month for month 1 through month 60.

The proposed plan duration is **60** months. The applicable commitment period is 60 months. Section 1325(b)(4).

See Section (J), Varying Provisions.

(2) In addition to the plan payments, Debtor will submit the following property to the Trustee: **NONE**

See Section (J), Varying Provisions.

(B) Trustee's Percentage Fee. Pursuant to 28 U.S.C. § 586(e), the Trustee may collect the percentage fee from all payments and property received, not to exceed 10%.

See Section (J), Varying Provisions.

(C) **Treatment of Administrative Expenses and Claims.** Except adequate protection payments under (C)(1), post-petition mortgage payments under (C)(4), or as otherwise ordered by the Court, the Trustee will make disbursements to creditors after the Court confirms this Plan. Unless otherwise provided in Section (J), disbursements by the Trustee shall be pro rata by class (except for adequate protection payments) and made in the following order:

(1) ***Adequate protection payments.*** Section 1326(a)(1)(C) requires adequate protection payments to be made to creditors secured by personal property. Pursuant to Local Bankruptcy Rule 2084-6, the Trustee is authorized to make pre-confirmation adequate protection payments to certain secured creditors without a Court order, provided the claim is properly listed on Schedule D, the creditor files a secured proof of claim that includes documentation evidencing a perfected security agreement, and the debtor or creditor sends a letter to the trustee requesting payment of pre-confirmation adequate protection payments. The Trustee will apply adequate protection payments to the creditor's secured claim. After confirmation, unless the Court orders otherwise, adequate protection payments will continue in the same amount until claims to be paid before these claimants are paid in full, unless the confirmed plan or a court order specifies a different amount.. **If a secured creditor disagrees with the amount of the proposed adequate protection payments or the plan fails to provide for such payments, the creditor may file an objection to**

confirmation of this plan, file a motion pursuant to §§ 362, 363, or both.

<u>Creditor</u>	<u>Property Description</u>	<u>Monthly Amount</u>
Ally Financial	2013 Chevrolet Equinox	\$135.00
Alphera	2016 Dodge Durango	\$654.19
Harley Davidson Financial	2008 Harley Davidson	\$ 65.00

See Section (J), Varying Provisions.

(2) **Administrative expenses.** Section 507(a)(2).

(a) Attorney fees. Debtor's attorney received \$00.00 before filing. The balance of **\$1,500.00 paid outside the plan** by *Metlife Insurance Company dba Hyatt Legal Plans* or an amount approved by the Court upon application shall be paid by the Trustee.

X See Section (J), Varying Provisions.

(b) Other Administrative Expenses. **NONE**

See Section (J), Varying Provisions.

(3) **Leases and Unexpired Executory Contracts.** Pursuant to § 1322(b), the Debtor assumes or rejects the following lease or unexpired executory contract. For a lease or executory contract with an arrearage to cure, the arrearage will be cured in the plan payments with regular monthly payments to be paid direct by the Debtor. The arrearage

amount to be adjusted to the amount in the creditor's allowed proof of claim.

(a) Assumed: Estimated Arrearage
Creditor & Amount
Property **NONE**
Description
Arrearage Through Date

(b) Rejected: Property Description
Creditor **NONE**

See Section (J), Varying Provisions.

(4) ***Claims Secured Solely by Security Interest in Real Property.*** A creditor identified in this paragraph may mail the Debtor all correspondence, notices, statements, payment coupons, escrow notices, and default notices concerning any change to the monthly payment or interest rate without such being a violation of the automatic stay. Unless otherwise stated below, Debtor is to pay post-petition payments direct to the creditor and prepetition arrearages shall be cured through the Trustee. No interest will be paid on the prepetition arrearage or debt unless otherwise stated. The arrearage amount is to be adjusted to the amount in the creditor's allowed proof of claim. Except as provided in Local Bankruptcy Rule 2084-23 if a creditor gets unconditional stay relief, the actual cure amount to be paid shall be adjusted by the Trustee pursuant to the creditor's ***allowed*** proof of claim. If the Debtor is surrendering an interest in

real property, such provision is in paragraph (E). The Debtor is retaining real property and provides for such debt as follows:

<u>Creditor/Servicing Agent & Property Description</u>	<u>Collateral Value & Valuation Method</u>
LoanCare SFR 18128 W. Mission Lane Waddell, Arizona 85355	\$213,000.00 Debtors' estimate

<u>Post-Petition Mortgage Payments</u>	<u>Estimated Arrearage</u>	<u>Arrearage Through Date</u>
\$1,308.73	\$ 00.00	NA

Debtor will pay direct to Creditor;
or
 Included in Plan payment.
Trustee will pay creditor
 See Section (J), Varying Provisions.

(5) ***Claims Secured by Personal Property or a Combination of Real and Personal Property.*** Pursuant to § 1325(a), a secured creditor listed below shall be paid the amount shown as the Amount to be Paid on Secured Claim, with such amount included in the Plan payments. However, if the creditor's proof of claim amount is less than the Amount to be Paid on Secured Claim, then only the proof of claim amount will be paid. Any adequate protection payments are as provided in Section (C)(1) above. If a creditor fails to file a secured claim or files a wholly unsecured claim, the debtor may delete the proposed payment of a secured claim in the order confirming plan.

<u>Creditor and Property Description</u>	<u>Debt Amount</u>
♦ Alphera Financial 2016 Dodge Durango	\$38,375.04

<u>Value of Collateral and Valuation</u>	<u>Amount to be Paid On Secured Claim</u>	<u>Interest Rate Contract Rate</u>
<u>Method</u>	<u>Paid in full</u>	
\$33,500.00	thru conduit	
Debtor's estimate	payments	

Secured Creditor Alphera Financial debt was incurred less than 910 days prior to the filing of this proceeding, therefore making it a non-modifiable debt.

♦ Ally Financial	\$19,206.81
2013 Chevrolet Equinox	

♦ Harley Davidson Financial	\$ 6,364.26
2008 Harley Davidson Super Glide	

\$13,570.00	\$13,570.00	7% or contract rate whichever is lower
KBB Private Party value		
\$ 6,500.00	\$ 6,500.00	7% or contract rate whichever is lower
Debtors' estimate of value		

X See Section (J), Varying Provisions.

(6) **Priority, Unsecured Claims.** All allowed claims entitled to priority treatment under § 507 shall be paid in full pro rata.

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(a) Unsecured Domestic Support Obligations. The Debtor shall remain current on such obligations that come due after filing the petition. Unpaid obligations before the petition date to be cured in the plan payments.

<u>Creditor</u>	<u>Estimated Arrearage Amount</u>
	NONE
	<u>Arrearage Through Date</u>

(b) Other unsecured priority claims.

<u>Creditor</u>	<u>Type of Property Debt</u>
	NONE
	<u>Estimated Amount</u>

See Section (J), Varying Provisions.

(7) ***Co-debtor Claims.*** The following co-debtor claim is to be paid per the allowed claim, pro rata before other unsecured, non-priority claims.

<u>Creditor</u>	<u>Co-debtor Name</u>	<u>Estimated Debt Amount</u>
		NONE

See Section (J), Varying Provisions.

(8) ***Non-priority, Unsecured Claims.*** Allowed unsecured, non-priority claims shall be paid

pro rata the balance of payments under the Plan.

See Section (J), Varying Provisions.

(D) **Lien Retention.** Secured creditors shall retain their liens until payment of the underlying debt determined under non-bankruptcy law or upon discharge, whichever occurs first. Federal tax liens shall continue to attach to property excluded from the bankruptcy estate under 11 U.S.C. §541(c)(2) until the Internal Revenue Service is required to release its liens in accordance with non-bankruptcy law.

See Section (J), Varying Provisions.

(E) **Surrendered Property.** Debtor surrenders the following property to the secured creditor. Upon confirmation of this Plan or except as otherwise ordered by the Court, bankruptcy stays are lifted as to the collateral to be surrendered. Any secured claim filed by such creditor shall receive no distribution until the creditor files an allowed unsecured claim or an amended proof of claim that reflects any deficiency balance remaining on the claim. *Should the creditor fail to file an amended unsecured claim consistent with this provision, the Trustee need not make any distributions to that creditor.*

<u>Creditor</u>	<u>Property to be surrendered</u>
	NONE

(F) **Attorney Application for Payment of Attorney Fees.**

Counsel for the Debtor has received a prepetition retainer of \$00.00, to be applied against fees and costs incurred. Fees and costs exceeding the retainer shall be paid from funds held by the Chapter 13 Trustee as an administrative expense. Counsel will be paid as selected in paragraph (1) or (2) below:

(1)(a) **Flat Fee.** Counsel for the Debtor has agreed to a total sum of \$_____ to represent the Debtor. Counsel has agreed to perform the following services through confirmation of the plan:

- All of the below, except Additional Services.
- Review of financial documents and information.
- Consultation, planning, and advice, including office visits and telephone communications.
- Preparation of Petition, Schedules, Statement of Financial Affairs, Master Mailing List.
- Preparation and filing of Chapter 13 Plan, Plan Analysis, and any necessary amendments.
- Attendance at the § 341 meeting of creditors.
- Resolution of creditor objections and Trustee recommendations, and attendance at hearings.
- Reviewing and analyzing creditor claims for potential objections, and attendance at hearings.

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- Responding to motions to dismiss, and attendance at hearings.
- Responding to motions for relief from the automatic stay, and attendance at hearings.
- Drafting and mailing of any necessary correspondence.
- Preparation of proposed order confirming the plan.
- Representation regarding the pre-filing credit briefing and post-filing education course.

(b) **Additional Services.** Counsel for the Debtor has agreed to charge a flat fee for the following additional services provided to the Debtor after confirmation of the plan:

- Representation in any contested matter, evidentiary hearing, and oral argument;
- Representation in any adversary proceedings.
- Preparation and filing of Modified Plan _____.
- Preparation and filing of motion for moratorium _____.
- Responding to motion to dismiss, and attendance at hearings _____.
- Defending motion for relief from the automatic stay or adversary proceeding _____.
- Preparation and filing of any motion to sell property
- Other to be determined between attorney and client.

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All other additional services will be billed at the rate of _____ per hour for attorney time and _____ per hour for paralegal time. Counsel will file and notice a separate fee application detailing the additional fees and costs requested. Counsel will include *all* time expended in the case in the separate fee application.

See Section (J), Varying Provisions.

(2) **Hourly Fees.** For hourly fees to be paid as an administrative expense, counsel must file and notice a separate fee application detailing the additional fees and costs requested. The application must include all time expended in the case.

Counsel has agreed to represent the Debtor for all services related to the Chapter 13 bankruptcy to be billed at the rate of \$_____ per hour for attorney time and \$_____ per hour for paralegal time.

See Section (J), Varying Provisions.

(G) **Vesting.** Property of the estate shall vest in the Debtor upon confirmation of the Plan. The following property shall not re-vest in the Debtor upon confirmation: ***all properties listed on schedules A and B.***

See Section (J), Varying Provisions.

(H) **Tax Returns.** While the case is pending, the Debtor shall provide to the trustee a copy of any post-petition tax return within thirty days after filing the return with the tax agency. The Debtor has filed all tax returns for all taxable periods

during the four-year period ending on the petition date, except: N/A.

X See Section (J), Varying Provisions.

(I) **Funding Shortfall.** Debtor will cure any funding shortfall before the Plan is deemed completed.

(J) **Varying Provisions.** The Debtor submits the following provisions that vary from the Local Plan Form, Sections (A) through (H):

1. (Opening Paragraph) All defaults are waived pursuant to 11 U.S.C. §1322(b)(3).
2. (A)(2) All property or monetary funds submitted to/recovered by the case trustee, pursuant to this Plan of Reorganization, shall be treated as advance plan payments with the plan duration to be shortened proportionally if the plan duration is not a mandated 60 months pursuant to 11 U.S.C. §1325(b)(3).
3. (C)(2)(a) In the event this case should be dismissed prior to confirmation (or prior to distribution if the case is confirmed), such administrative claim shall be paid from plan payments as may be awarded by the Court, pursuant to LRBR 2084-3(c).
4. (C)(4) & (5) No Payments shall be deemed late and the agreement which is the basis for a claim shall not be deemed in default, solely as a result of arrearages being cured under this Plan.
5. (C)(8) Such creditors are not entitled to interest on their claims. Upon successful completion of all Plan payments, any amounts still unpaid to this class of creditors, shall be discharged.

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Any claims not specifically named in the Plan are presumed to be unsecured claims and treated as set forth in this subparagraph.

6. (F) Post-confirmation legal fees will be in an amount agreed to by the debtor(s) and their legal counsel, disclosed and paid as required by applicable federal law.
7. (G) No property of the estate shall vest in the debtor(s) until discharge, conversion of this proceeding to another chapter under the bankruptcy code, or dismissal.
8. (H) The debtor will file post-petition **federal** income tax returns pursuant to 11 U.S.C. §521(f) with the Court.

(K) **Plan Summary.** If there is a discrepancy between paragraphs (A) – (J) and paragraphs (K) – (M), then the provisions of paragraphs (A) – (J) and the confirmed plan control.

- (1) Trustee's compensation
(10% of plan payments).....\$ 5,800.80
- (2) Ongoing post-petition mortgage
payments:direct by debtors
- (3) Administrative expenses
and claims:.....\$_____
- (4) Priority claims:\$_____
- (5) Prepetition mortgage or lease
arrears, or amount to cure defaults,
including Interest.....\$_____
- (6) Secured personal property
claims, including interest.....\$64,020.00
- (7) Amount to unsecured
non-priority claims\$ 79.20

Total of plan payments\$69,900.00

(L) **Section 1325 analysis.**

(1) *Best Interest of Creditors Test:*

- (a) Value of debtor's interest
in nonexempt property..... \$ 0.00
- (b) Plus: Value of property
recoverable under avoiding
powers..... \$ 0.00
- (c) Less: Estimated Chapter 7
administrative expenses \$ 45.00
- (d) Less: Amount payable to
unsecured, priority creditors \$ 0.00
- (e) **Equals:** Estimated amount
payable to unsecured,
non-priority claims if debtor
filed Chapter 7..... \$ 0.00

Paragraph (2) is to be completed by debtors whose current monthly income exceeds the state's median income.

(2) *Section 1325(b) Analysis:*

- (a) Monthly disposable income
under § 1325 (b)(2), Form B22C,
Statement of Current Monthly
Income \$ 00.00
- (b) Applicable Commitment
Period.....x 60
- (c) Section 1325(b)(2) monthly
disposable income amount
multiplied by 60\$ _____

(3) **Estimated Amount to Unsecured
Non-priority Creditors Under
The Plan**.....\$ 00.00

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Dated: October 27, 2015.

/s/ John Robert Reichard Ericka Rae Reichard
Debtor Debtor

/s/ David E. Allegrucci #012611
Attorney for Debtor

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA**

<p>In re JOHN ROBERT REICHARD, and ERICKA RAE REICHERD, Debtor(s).</p>	<p>Case No. 2-16-bk-12633-BMW CHAPTER 13 PLAN <input type="checkbox"/> Original <input checked="" type="checkbox"/> Amended <input type="checkbox"/> Modified <input type="checkbox"/> Plan payments include post-petition mortgage payments <input type="checkbox"/> Flat Fee/Administrative Expenses <input type="checkbox"/> Hourly Fee/Administrative Expense</p>
--	--

This Plan¹ includes the following (check all that are applicable):

- A limit on the amount of a secured claim, which may result in a partial payment or no payment to the secured creditor. See Section (C)(5)(b).
- Avoidance of a judicial lien or nonpossessory, nonpurchase money security interest. See Section (C)(5)(c).
- Nonstandard Provisions. See Section (H).

¹ "Plan" includes the original plan and any amended or modified plan.

Your rights may be affected by this Plan. Your claim may be reduced, modified or eliminated. If you object to the treatment of your claim as proposed in this Plan or to any provision of this Plan, you must file a written objection by the deadline set forth below. The Bankruptcy Court may confirm this Plan without further notice if no objection is filed and the order is approved by the Trustee. See Bankruptcy Rule 3015 and Local Rule 2084-13.

This Chapter 13 Plan is proposed by the above Debtor.² The Debtor certifies that the information contained in this Plan is accurate. A creditor who disagrees with the proposed treatment of its debt in this Plan must timely file an objection to the Plan and serve copies on the Debtor, Debtor's attorney (if any), and the Chapter 13 Trustee not less than 14 days after the date set for the first meeting of creditors, or any continuation of such meeting, or 28 days after service of the Plan, whichever is later. See Local Rule 2084-9.

This Plan does not allow claims or alter the need for timely filing any claim. For a creditor to receive a distribution for an unsecured claim, the creditor must file a proof of claim with the Court.

If confirmed, the Plan will modify the rights and duties of the Debtor and creditors, except secured creditors will retain their liens until the earlier of payment of the underlying debt or Debtor's discharge under Code

² If this is a joint case, then "Debtor" means both Debtors.

§ 1328³. If the case is dismissed or converted to another chapter (for example, Chapter 7) without completion of the Plan, each lien shall be retained to the extent recognized by applicable nonbankruptcy law.

Pre-petition defaults will be cured using the interest rate set forth in the Plan or Code § 511, if applicable. Any ongoing obligation will be paid according to the terms of the Plan.

This is an Amended or Modified Plan.

The reason(s) why Debtor filed this Amended or Modified Plan:

Pursuant to Court Order dated July 5, 2018,

Summarize how the Plan varies from the last Plan filed: Reduces the amount to be paid Harley-Davidson. Crdit Corp. to the secured amount within its proof of claim #2, removes the provision that only post-petition Federal income tax returns will be filed with the Court, lowers interest rate for Ally Financial.

(A) Plan Payments and Property to be Submitted to the Trustee.

Plan payments start on December 2, 2016. The Debtor shall pay the Trustee as follows:

\$1,165.00 each month for month 1 through month 10.

³ “Code” means the United States Bankruptcy Code, 11 U.S.C. § 101 et. seq.

\$1,190.00 each month for month 11 through month 60.

\$_____ each month for month ____ through month ____.

The proposed Plan duration is 60 months. The applicable commitment period is 60 months.

See Code § 1325(b)(4). In addition to plan payments and, if applicable, mortgage conduit payments, Debtor will submit the following property to the Trustee:

NONE

(B) Trustee's Percentage Fee. The Trustee shall collect upon receipt a percentage fee from all plan payments (including mortgage payments) and property received, not to exceed 10%.

(C) Administrative Expenses and All Claims.

(1) Until the Court confirms the Plan the Trustee will make adequate protection payments under Section (C)(1)(a) below, mortgage conduit payments under Section (C)(1)(b), if applicable, and pay other sums as ordered by the Court. Other disbursements will be made after the Court confirms the Plan. Unless otherwise provided for in Section (H) below, disbursements by the Trustee shall be pro rata within classes and made in the following order:

(a) *Adequate protection payments to creditors secured by personal property.*

None. *If "None" is checked, the rest of Section (C)(1)(a) is not to be completed.*

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Pursuant to Local Rule 2084-6, the Trustee is authorized to make monthly pre-confirmation adequate protection payments to a secured creditor without a Court order, provided the claim is properly listed on Schedule D, a secured proof of claim is filed that includes documentation evidencing a perfected security agreement, and the Debtor or creditor sends a letter to the Trustee requesting payment. The Trustee will apply adequate protection payments to the creditor's secured claim. After confirmation, adequate protection payments will continue until the claim is paid in full, unless the confirmed Plan or a Court order specifies a different treatment. If a creditor disagrees with the amount of the proposed adequate protection payments or the Plan fails to provide for such payments, the creditor may file an objection to confirmation of this Plan and/or file a motion pursuant to Code §§ 362 or 363.

<u>Creditor</u>	<u>Property Description</u>	<u>Collateral Value</u>	<u>Monthly Amount</u>
Ally Financial	2013 Chevrolet Equinox	\$ 13,570.00	\$ 135.00
BMW Financial aka Alphera	2016 Dodge Durango	\$ 33,500.00	\$ 654.19
Harley-Davidson Credit Corp.	2008 Harley-Davidson Super Glide	\$ 6,500.00	\$ 65.00

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Nonstandard Provisions. See Section (H).

(b) *Mortgage Conduit Payments.*

None.

The Trustee shall disburse Conduit Payments to a Real Property Creditor without regard to whether the Court has confirmed a Plan or the Real Property Creditor has filed a proof of claim. See Section (C)(4)(c) and Local Rule 2084-4.

(2) *Administrative expenses.* Code § 507(a)(2).

(a) *Attorney fees.* Debtor's attorney has agreed to:

A flat fee of \$Paid by 3rd, of which \$Party was paid before the filing of the case (See Local Rule 2084-3);

or

File a fee application for payment of a reasonable amount of fees. The estimated amount of fees to be paid by the Trustee, subject to Court order, is \$_____, of which \$_____ was paid before the filing of the case.

(b) *Additional Services.* Counsel for the Debtor has agreed to charge a flat fee for the following additional services provided to the Debtor:

(i) Before Confirmation:

Adversary proceedings \$_____.

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- Lien Avoidance Actions \$_____.
- Preparing and filing of any motion to sell property \$_____.
- Other Flat Fees for _____
\$_____.

(ii) After Confirmation:

- Preparing and filing of Modified Plan \$_____.
- Responding to motion to dismiss and attendance at hearings \$_____.
- Defending motion for relief from the automatic stay \$_____.
- Adversary proceedings \$_____.
- Lien Avoidance Actions \$_____.
- Preparing and filing of any motion to sell property \$_____.
- Other Flat Fees for _____
\$_____.

All other additional services will be billed at the rate of \$300.00 per hour for attorney time and \$80.00 per hour for paralegal time. Counsel will file and notice a separate fee application detailing the additional fees and costs requested. Counsel will include *all* time expended in the case in the separate fee application.

(c) *Other Professional Expenses:*

--

(3) *Leases and Unexpired Executory Contracts.*

None. *If "None" is checked, the rest of Section (C)(3) is not to be completed.*

Pursuant to Code § 1322(b), the Debtor assumes or rejects the following lease or unexpired executory contract. For a lease or executory contract with sums owing, the arrearage will be cured by periodic plan payments. Unless the Court orders otherwise, the arrearage amount shall be the amount stated in the creditor's allowed proof of claim.

(a) *Assumed.*

No interest will be paid on the prepetition arrearage unless otherwise stated in Nonstandard Provisions at Section (H). A creditor identified in this paragraph may mail to the Debtor all correspondence, notices, statements, payment coupons, escrow notices, and default notices concerning any change to the monthly payment or interest rate without such being a violation of the automatic stay.

<u>Creditor</u>	<u>Property Description</u>	<u>Collateral Value</u>	<u>Monthly Amount</u>

Nonstandard Provisions. See Section (H).

(b) *Rejected.*

<u>Creditor</u>	<u>Property Description</u>

Nonstandard Provisions. See Section (H).

(4) Creditors with a Security Interest in Real Property.

None. *If "None" is checked, the rest of Section (C)(4) is not to be completed.*

(a) *Claim Wholly Unsecured.* The Debtor considers any real property creditor listed below to have an unsecured claim under Code § 506(a) as senior liens are greater in amount than the value of the real property. Unless disallowed or otherwise ordered, each of the following shall be classified as a wholly unsecured claim under Section (C)(7) below. This provision shall not alter the status of a claim otherwise entitled to be classified as a priority under Code § 507(a)(8).

<u>Creditor</u>	<u>Property Description</u>	<u>Value of Collateral</u>	<u>Total Amount of Liens with Greater Priority</u>

(b) *No Pre-Petition Mortgage Arrears.* To the extent there are no pre-petition arrears, regular post-petition mortgage payments shall be paid directly by the Debtor to the secured creditor.

<u>Creditor</u>	<u>Property Address</u>	<u>Post-Petition Payments by Debtor</u>
Lakeview Loan Servicing, LLC	Homestead	\$1,345.83

(c) *Curing of Default and Maintenance of Payments.* Prepetition arrearages, including fees and costs, as well as the regular post-petition payments shall be paid through the Plan by the Trustee. No interest will be paid on the prepetition arrearage unless otherwise stated in Nonstandard Provisions. Unless the Court orders otherwise, the arrearage amount shall be the amount stated in the creditor's allowed proof of claim.

A creditor identified in this paragraph may mail the Debtor all correspondence, notices, statements, payment coupons, escrow notices, and default notices concerning any change to the monthly payment or interest rate without violating the automatic stay.

<u>Creditor or Property Servicing Agent</u>	<u>Property Description</u>	<u>Current Monthly Payment</u>	<u>Estimated Arrearage Amount Owed and Date Owed Through</u>	<u>Interest Rate, if applicable (i.e., HOA's)</u>

Nonstandard Provisions. See Section (H).

(5) *Claims Secured by Personal Property or a Combination of Real and Personal Property.*

None. *If "None" is checked, the rest of Section (C)(5) Is not to be completed.*

Claims under paragraphs (a) and (b) that are included in the plan payment will be paid concurrently and pro rata.

(a) *Unmodified Secured Claims.*

None. *If "None" is checked, the rest of Section (C)(5)(a) is not to be completed.*

A claim stated in this subparagraph (i.e. 910 claims) will be paid in full under the Plan with

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interest at the rate stated below, which may vary from the contract interest rate. Unless otherwise ordered, the principal amount to be paid will be as stated in the creditor's proof of claim. The holder of a claim will retain the lien until the earlier of payment of the underlying debt determined under nonbankruptcy law or discharge under Code § 1328, at which time the lien will terminate and shall be released by the creditor, Federal tax liens shall continue to attach to property excluded from the bankruptcy estate under Code § 541(c)(2) until the Internal Revenue Service is required to release the liens in accordance with non-bankruptcy law.

<u>Creditor</u>	<u>Property Description</u>	<u>Estimated Amount to be Paid on Secured Claim</u>	<u>Proposed Interest Rate</u>
BMW Financial Services, NA, LLC aka Alphera Financial	2016 Dodge Durango	\$37,257.08	Included in Conduit payment
Cortessa Community Association	Homestead	\$1,267.40	0%

This debt has nonfiling codebtor(s) other than a spouse.

Name(s) of other individuals) liable: _____

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Post-petition payments to be made by: Trustee; or Nonfiling codebtor.

Nonstandard Provisions. See Section (H).

(b) *Modified Secured Claims.*

None. *If "None" is checked, the rest of Section (C)(5)(b) is not to be completed.*

Secured creditors listed below shall be paid the amount shown below as the Amount to be Paid on Secured Claim, with such amount paid through the Plan payments. If the Plan proposes to pay a Secured Claim less than the amount asserted in the proof of claim, then the holder of the Secured Claim must file a timely objection to the Plan. If the principal amount of the creditor's proof of claim is less than the Amount to be Paid on Secured Claim, then only the proof of claim amount will be paid. If a creditor fails to file a secured claim or files a wholly unsecured claim, the debtor may delete the proposed payment of a secured claim in the order confirming plan. The holder of a timely filed secured claim will retain its lien until the earlier of payment of the underlying debt determined under nonbankruptcy law or discharge under Code § 1328, at which time the lien will terminate and shall be released by the creditor. Any proposed

adequate protection payments are provided for in Section (C)(1)(a) above.

<u>Creditor and Property Description</u>	<u>Debt Amount</u>	<u>Value of Collateral and Valuation Method</u>	<u>Amount to be Paid on Secured Claim</u>	<u>Proposed Interest Rate</u>
Ally Financial	\$19,293.06	\$13,570.00 KBB Private Party Value	\$13,670.00	4.90%
Harley- Davidson Financial	\$6,516.11	\$6,500.00 Debtors' est. of value	\$6,255.00	7.00%

Nonstandard Provisions. See Section (H).

(c) Lien Avoidance.

None. *If "None" is checked, the rest of Section (C)(5)(c) need not be completed.*

The judicial liens or nonpossessory, non-purchase money security interests securing the claims listed below impair exemptions to which the debtor(s) would have been entitled under Code § 522(b). Unless ordered otherwise, a judicial lien or security interest securing a claim listed below will be avoided to the extent that it impairs such exemptions upon entry of the order confirming the plan. The amount of the judicial lien or security interest that is avoided will be treated as an

unsecured claim in Section (C)(7) to the extent allowed. The amount, if any, of the judicial lien or security interest that is not avoided will be paid in full as a secured claim under the plan. See Code § 522(f) and Bankruptcy Rule 4003(d). *if more than one lien is to be avoided, provide the information separately for each lien. All information for the avoidance of the lien(s) must be provided.*

<u>Information regarding judicial lien or security interest</u>	<u>Information regarding calculation of lien avoidance and treatment of remaining secured claim</u>

(6) *Priority, Unsecured Claims, Other Than Debtor's Attorney Fees.*

None. *If "None" is checked, the rest of Section (C)(6) is not to be completed.*

All allowed claims entitled to priority treatment under Code § 507 shall be paid in full, pro rata:

(a) *Unsecured Domestic Support Obligations.* The Debtor shall remain current on such obligations that come due after filing the petition. Unpaid obligations before the petition date are to be cured in the plan payments. The amount to be paid will be adjusted to the creditor's allowed claim amount, through the claim process. If the holder of a domestic support obligation

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disagrees with the treatment proposed in this Plan, the holder must file a timely objection.

<u>Creditor</u>	<u>Estimated Arrearage</u>

(b) Other unsecured priority claims.

<u>Creditor</u>	<u>Type of Priority Debt</u>	<u>Estimated Amount</u>

Nonstandard Provisions. See Section (H).

(7) *Nonpriority, Unsecured Claims.* Allowed unsecured, nonpriority claims shall be paid pro rata the balance of payments, if any, under the Plan. The amount to be paid or actually paid may differ from the Plan Analysis, depending on the Plan confirmation process and claims allowance.

Nonstandard Provisions. See Section (H).

(D) Surrendered Property.

None. *If "None" is checked, the rest of Section (D) is not to be completed.*

Debtor surrenders the following property to the secured creditor. Upon confirmation of this Plan or except as otherwise ordered,

bankruptcy stays are lifted as to the collateral to be surrendered. Any claim filed by such creditor shall receive no distribution until the creditor files a claim or an amended proof of claim that reflects any deficiency balance remaining on the claim. Should the creditor fail to *file* an amended deficiency claim consistent with this provision, the Trustee need not make any distributions to that creditor.

<u>Entity</u>	<u>Brief Description of Property</u>

(E) Vesting. Except as stated in this paragraph, property of the estate shall vest in the Debtor upon confirmation of the Plan.

The following property shall vest in the Debtor upon Plan completion:

<u>Brief Description of Property</u>
All property listed in Schedules “A” and “B.”

Nonstandard Provisions. See Section (H).

(F) Tax Returns. While the case is pending, the Debtor shall provide to the Trustee a copy of any post-petition tax return within 14 days after filing the return with the tax agency. The Debtor has filed all tax returns for all taxable periods during the four-year period ending on the petition date, except;

<u>Unfiled Tax Returns</u>

(G) Funding Shortfall. Debtor will cure any funding shortfall before the Plan is deemed completed.

(H) Nonstandard Provisions. Any Nonstandard Provision included herein must not be inconsistent with the Code or Local Rules and must identify the provision of the Plan being modified, the proposed modification and the justification for the modification. Any Nonstandard Provision placed elsewhere in this Plan is void. The Debtor submits the following provisions that vary from Section (C) of the Local Plan Form:

- None. *If "None" is checked, the rest of Section (H) is not to be completed.*
- Provide the detail required above.

<u>Nonstandard Provisions</u>
<i>[State the provision(s) with reference to relevant paragraph(s)]</i> ¶¶ C(5)(a) and (b) “the plan may . . . provide for the curing or waiving of any default.” 11 U.S.C. §1322(b)(3). Justification: This is a quote from the U.S. Bankruptcy Code. Waiving defaults prevents the accrual of interest and/or penalties for a statutory default. It also allows the payment of missed postpetition payments to be cured through this Plan.

(I) Plan Summary. If there are discrepancies between the Plan and this Plan Analysis, the provisions of the confirmed Plan control.

(1)	Trustee's Compensation (10% of Total of Plan Payments to Trustee)	\$ <u>6,403.50</u>
(2)	Administrative Expenses (§ (C)(2)) ...	\$ _____
(3)	Leases and Executory Contracts (§ (C)(3))	\$ _____
(4)(a)	Conduit Mortgage Payments (§ (C)(4)(c))	\$ _____
(4)(b)	Arrearage Claims Secured Solely by Real Property (§ (C)(4)(c))	\$ <u>1,267.40</u>
(5)(a)	Claims Secured by Personal Property or Combination of Real & Personal Property (§ (C)(5)) – Unmodified	\$ <u>37,257.08</u>
(5)(b)	Claims Secured by Personal Property or Combination of Real & Personal Property (§ (C)(5)) – Modified	\$ <u>26,142.82</u>
(6)	Priority Unsecured Claims (§ (C)(6)) ..	\$ _____
(7)	Unsecured Nonpriority Claims (§ (c)(7))	\$ <u>79.20</u>
(8)	Total of Plan Payments to Trustee ..	\$ <u>NaN</u> \$71,150.00

(J) Section 1325 analysis.

(1) Best Interest of Creditors Test:

(a)	Value of Debtor's interest in nonexempt property	\$ <u>00.00</u>
(b)	Plus: Value of property recoverable under avoidance powers	\$ <u>00.00</u>
(c)	Less: Estimated Chapter 7 administrative expenses	\$ <u>45.00</u>

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(d) Less: Amount payable to unsecured, priority creditors	<u>\$00.00</u>
(e) Equals: Estimated amount payable to unsecured, nonpriority claims if Debtor filed Chapter 75	<u>\$00.00</u>
(2) Section 1325(b) Analysis:	
(a) Monthly Disposable Income, Form B 122C-2 (if less than \$0, then state	<u>\$00.00</u>
(b) Applicable Commitment Period.....x 60	
(c) Total of Line (2)(a) amount	<u>\$00.00</u>
(3) Estimated Payment to Unsecured, Nonpriority Creditors Under Plan	
<u>\$79.20</u>	

Certification by Debtor(s) and Attorney for Debtor(s):
No [Handwritten] changes were made to the Model Plan, other than the possible inclusion of relevant Non-standard Provisions in Section (H).

Dated: August 5, 2018.

Debtor

Debtor

/s/ David Allegrucci
Attorney for Debtor

FEDERAL RULES OF BANKRUPTCY PROCEDURE

Rule 3013. Classification of Claims and Interests

For the purposes of the plan and its acceptance, the court may, on motion after hearing on notice as the court may direct, determine classes of creditors and equity security holders pursuant to §§1122, 1222(b)(1), and 1322(b)(1) of the Code.

(As amended Apr. 30, 1991, eff. Aug. 1, 1991.)

Rule 3014. Election Under § 1111(b) by Secured Creditor in Chapter 9 Municipality or Chapter 11 Reorganization Case

An election of application of § 1111(b)(2) of the Code by a class of secured creditors in a chapter 9 or 11 case may be made at any time prior to the conclusion of the hearing on the disclosure statement or within such later time as the court may fix. If the disclosure statement is conditionally approved pursuant to Rule 3017.1, and a final hearing on the disclosure statement is not held, the election of application of § 1111(b)(2) may be made not later than the date fixed pursuant to Rule 3017.1(a)(2) or another date the court may fix. The election shall be in writing and signed unless made at the hearing on the disclosure statement. The election, if made by the majorities required by §1111(b)(1)(A)(i), shall be binding on all members of the class with respect to the plan.

(As amended Apr. 11, 1997, eff. Dec. 1, 1997.)

**Rule 3015. Filing, Objection to Confirmation,
Effect of Confirmation, and Modification of
a Plan in a Chapter 12 or a Chapter 13 Case**

(a) **FILING A CHAPTER 12 PLAN.** The debtor may file a chapter 12 plan with the petition. If a plan is not filed with the petition, it shall be filed within the time prescribed by §1221 of the Code.

(b) **FILING A CHAPTER 13 PLAN.** The debtor may file a chapter 13 plan with the petition. If a plan is not filed with the petition, it shall be filed within 14 days thereafter, and such time may not be further extended except for cause shown and on notice as the court may direct. If a case is converted to chapter 13, a plan shall be filed within 14 days thereafter, and such time may not be further extended except for cause shown and on notice as the court may direct.

(c) **FORM OF CHAPTER 13 PLAN.** If there is an Official Form for a plan filed in a chapter 13 case, that form must be used unless a Local Form has been adopted in compliance with Rule 3015.1. With either the Official Form or a Local Form, a nonstandard provision is effective only if it is included in a section of the form designated for nonstandard provisions and is also identified in accordance with any other requirements of the form. As used in this rule and the Official Form or a Local Form, “nonstandard provision” means a provision not otherwise included in the Official or Local Form or deviating from it.

(d) **NOTICE.** If the plan is not included with the notice of the hearing on confirmation mailed under

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Rule 2002, the debtor shall serve the plan on the trustee and all creditors when it is filed with the court.

(e) TRANSMISSION TO UNITED STATES TRUSTEE. The clerk shall forthwith transmit to the United States trustee a copy of the plan and any modification thereof filed under subdivision (a) or (b) of this rule.

(f) OBJECTION TO CONFIRMATION; DETERMINATION OF GOOD FAITH IN THE ABSENCE OF AN OBJECTION. An objection to confirmation of a plan shall be filed and served on the debtor, the trustee, and any other entity designated by the court, and shall be transmitted to the United States trustee, at least seven days before the date set for the hearing on confirmation, unless the court orders otherwise. An objection to confirmation is governed by Rule 9014. If no objection is timely filed, the court may determine that the plan has been proposed in good faith and not by any means forbidden by law without receiving evidence on such issues.

(g) EFFECT OF CONFIRMATION. Upon the confirmation of a chapter 12 or chapter 13 plan:

(1) any determination in the plan made under Rule 3012 about the amount of a secured claim is binding on the holder of the claim, even if the holder files a contrary proof of claim or the debtor schedules that claim, and regardless of whether an objection to the claim has been filed; and

(2) any request in the plan to terminate the stay imposed by § 362(a), § 1201(a), or § 1301(a) is granted.

(h) MODIFICATION OF PLAN AFTER CONFIRMATION. A request to modify a plan under § 1229 or § 1329 of the Code shall identify the proponent and shall be filed together with the proposed modification. The clerk, or some other person as the court may direct, shall give the debtor, the trustee, and all creditors not less than 21 days' notice by mail of the time fixed for filing objections and, if an objection is filed, the hearing to consider the proposed modification, unless the court orders otherwise with respect to creditors who are not affected by the proposed modification. A copy of the notice shall be transmitted to the United States trustee. A copy of the proposed modification, or a summary thereof, shall be included with the notice. Any objection to the proposed modification shall be filed and served on the debtor, the trustee, and any other entity designated by the court, and shall be transmitted to the United States trustee. An objection to a proposed modification is governed by Rule 9014.

(As amended Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 22, 1993, eff. Aug. 1, 1993; Mar. 26, 2009, eff. Dec. 1, 2009; Apr. 27, 2017, eff. Dec. 1, 2017.)

**Rule 3015.1. Requirements for a Local Form for
Plans Filed in a Chapter 13 Case**

Notwithstanding Rule 9029(a)(1), a district may require that a Local Form for a plan filed in a chapter 13 case be used instead of an Official Form adopted for that purpose if the following conditions are satisfied:

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- (a) a single Local Form is adopted for the district after public notice and an opportunity for public comment;
- (b) each paragraph is numbered and labeled in boldface type with a heading stating the general subject matter of the paragraph;
- (c) the Local Form includes an initial paragraph for the debtor to indicate that the plan does or does not:
 - (1) contain any nonstandard provision;
 - (2) limit the amount of a secured claim based on a valuation of the collateral for the claim; or
 - (3) avoid a security interest or lien;
- (d) the Local Form contains separate paragraphs for:
 - (1) curing any default and maintaining payments on a claim secured by the debtor's principal residence;
 - (2) paying a domestic-support obligation;
 - (3) paying a claim described in the final paragraph of § 1325(a) of the Bankruptcy Code; and
 - (4) surrendering property that secures a claim with a request that the stay under §§362(a) and 1301(a) be terminated as to the surrendered collateral; and

(e) the Local Form contains a final paragraph for:

(1) the placement of nonstandard provisions, as defined in Rule 3015(c), along with a statement that any nonstandard provision placed elsewhere in the plan is void; and

(2) certification by the debtor's attorney or by an unrepresented debtor that the plan contains no nonstandard provision other than those set out in the final paragraph.

(Added Apr. 27, 2017, eff. Dec. 1, 2017.)

Rule 3016. Filing of Plan and Disclosure Statement in a Chapter 9 Municipality or Chapter 11 Reorganization Case

(a) IDENTIFICATION OF PLAN. Every proposed plan and any modification thereof shall be dated and, in a chapter 11 case, identified with the name of the entity or entities submitting or filing it.

(b) DISCLOSURE STATEMENT. In a chapter 9 or 11 case, a disclosure statement under § 1125 of the Code or evidence showing compliance with § 1126(b) shall be filed with the plan or within a time fixed by the court, unless the plan is intended to provide adequate information under §1125(f)(1). If the plan is intended to provide adequate information under §1125(f)(1), it shall be so designated and Rule 3017.1 shall apply as if the plan is a disclosure statement.

(c) INJUNCTION UNDER A PLAN. If a plan provides for an injunction against conduct not otherwise enjoined under the Code, the plan and disclosure

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statement shall describe in specific and conspicuous language (bold, italic, or underlined text) all acts to be enjoined and identify the entities that would be subject to the injunction.
