

1 NOT FOR PUBLICATION
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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 John Robert Reichard, et al.,

10 Appellants,

11 v.

12 Russell Brown,

13 Appellee.
14

No. CV-19-02010-PHX-DJH

ORDER

15 This appeal arises from the United States Bankruptcy Court for the District of
16 Arizona's Order denying confirmation of the plan of reorganization for Chapter 13
17 Debtors John Robert Reichard and Ericka¹ Rae Reichard ("Debtors"). (Doc. 9-1).

18 **I. Background**

19 Debtors filed a voluntary petition seeking relief under Chapter 13 of the
20 Bankruptcy Code on November 2, 2016. Thereafter, Debtors filed their proposed
21 Chapter 13 Plan (the "Proposed Plan") and it was noticed to all parties who had filed a
22 proof of claim in the bankruptcy case. Harley Davidson Credit Corporation ("Harley")
23 filed a proof of claim, asserting a secured claim in the amount of \$6,255.00, and an
24 unsecured claim in the amount of \$261.11. Debtors' Proposed Plan, however, proposed
25 to pay Harley \$6,500.00 on its secured claim, which amounts to \$245.00 more than
26 Harley is entitled on its secured claim. The parties appear to agree that the \$6,500.00
27 figure contained in the Proposed Plan is a scrivener's error; nonetheless, the Bankruptcy

28 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.

1 Court held that pursuant to the Bankruptcy Rules, Harley was entitled to notice of the
2 change to its secured claim amount. (Doc. 9-1). Debtors, however, argue that the
3 Bankruptcy Court erred in holding that Harley was entitled to receive notice of the
4 change.

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

17 The District of Arizona decided to amend its Local Bankruptcy Rules and create a
18 new Local Plan Form, in accordance with FRBP 3015(c). *See* L.R.Bankr.Pro. 2084. The
19 new Local Rule, 2084-4, took effect on December 1, 2017 and applies to this case.
20 General Order No. 17-1. Local Rule 2084-4 requires Chapter 13 debtors to use Local
21 Plan Form 2084-4 (the "Local Form"). The provision in the Local Form states that
22 "[w]hile the case is pending, the Debtor shall provide to the Trustee a copy of any post-
23 petition tax return within 14 days after filing the return with the tax agency." Local Form
24 2084-4 (Dec. 2017). Debtors were required to include this provision in their Proposed
25 Plan pursuant to Local Rule 2084-4(a). Debtors refused to do so, and the Trustee
26 objected. The parties requested that the Bankruptcy Court decide the issue.

27 The Bankruptcy Court held that the use of the Local Plan Form was mandatory in
28 this case and that Debtors were required to include the provision regarding post-petition

1 tax returns in their Proposed Plan. The Court concluded that the post-petition tax
2 provision did not violate the Bankruptcy Code or any other law. (Doc. 9-1). Debtors
3 appealed the decision to this Court.

4 The issues on appeal are (1) whether the Bankruptcy Court erred in holding that
5 Debtors could not modify Harley's secured claim without first providing notice to
6 Harley; and (2) whether the provision of the Bankruptcy Court's Chapter 13 Local Plan
7 Form requiring Debtors to turn over their post-petition tax returns to the Trustee violates
8 any provision of the Bankruptcy Code.

9 **II. Standard of Review**

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

18 This Court reviews a bankruptcy court's decision related to the confirmation of a
19 plan for an abuse of discretion. *In re Marshall*, 721 F.3d 1032, 1045 (9th Cir. 2013). "A
20 bankruptcy court abuses its discretion if it applies an incorrect legal standard or
21 misapplies the correct legal standard. . .". *TrafficSchool.com, Inc. v. Edriver Inc.*, 653
22 F.3d 820, 832 (9th Cir. 2011). Findings of fact are reviewed for clear error. *In re Bea*,
23 533 B.R. 283, 285 (9th Cir. B.A.P. 2015). This Court "must affirm the bankruptcy
24 court's fact findings unless [it] determine[s] that those findings are '(1) illogical,' (2)
25 'implausible,' or (3) without 'support in inferences that may be drawn from the facts in
26 the record.'" *United States v. Hinkson*, 585 F.3d 1247, 1262 (9th Cir. 2009) (*en banc*).
27 In other words, the Court must accept the bankruptcy court's findings of fact unless the
28 Court "is left with the definite and firm conviction that a mistake has been committed[.]"

1 *In re Greene*, 583 F.3d 614, 618 (9th Cir. 2009). This Court “may affirm the decision of
2 the bankruptcy court on any basis supported by the record.” *ASARCO v. Union Pac. Co.*,
3 765 F.3d 999, 1004 (9th Cir. 2014). The standard of adequacy of factual findings is
4 “whether they are explicit enough on the ultimate issues to give the appellate court a clear
5 understanding of the basis of the decision and to enable it to determine the grounds on
6 which the trial court reached its decision.” *Louie v. U.S.*, 776 F.2d 819, 822–23 (9th Cir.
7 1985) (quoting *Nicholson v. Bd. of Education Torrance Unified School District*, 682 F.2d
8 858, 866 (9th Cir. 1982)). The Court reviews “chapter 13 plan confirmation issues
9 requiring statutory interpretation *de novo*.” *In re Giesbrecht*, 429 B.R. 682, 687 (B.A.P.
10 9th Cir. 2010).

11 **III. Analysis**

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

14 **A. Amendment to Harley’s Secured Claim**

15 In the bankruptcy proceeding, Debtors sought to modify Harley’s secured claim
16 from the amount initially proposed due to an apparent scrivener’s error. Debtors argue
17 that they should be able to modify the Plan’s treatment of the secured claim without
18 giving Harley notice of the amendment and an opportunity to respond. (Doc. 5 at 9).
19 Debtors argue that even with the amendment, Harley will be paid its full secured claim
20 amount. While the difference in the amount initially listed and the proposed modified
21 amount is fairly small, the Bankruptcy Court held that regardless of the amount, the
22 Bankruptcy Code requires an amended Plan to be filed in order to put the creditor on
23 notice of any changes in treatment to their secured claims. (Doc. 9-1 at 6). This Court
24 agrees.

25 The Bankruptcy Code contemplates that a debtor may modify or amend the plan
26 before confirmation. Section 1323(a) states that “[t]he debtor may modify the plan at any
27 time before confirmation.” This modification becomes part of the new plan. 11 U.S.C. §
28 1323(b). However, the FRBP requires that notice be given to affected creditors. Fed. R.

1 Bankr. Pro. 2002(a)(5). The affected creditor has 21 days to accept or object to a
2 proposed modification of a debtor's plan after receiving notice. (*Id.*)

3 The Proposed Plan, as initially noticed, projected to pay Harley \$6,500 on its
4 secured claim. Debtors seek to reduce the secured claim amount to \$6,255, which is the
5 amount that Harley submitted on its Notice of Claim, a difference of \$245. While the
6 Bankruptcy Court noted that it appeared that the proposed amendment was only to fix a
7 prior mistake, it held that Harley is entitled to receive notice and have an opportunity to
8 object to the amendment.² The plain language of the FRBP require such notice be given,
9 regardless of the amount of the change in the claim or the reason for the amendment.
10 Fed. R. Bankr. P. 2002(a)(5). The Court finds that the Bankruptcy Court did not abuse its
11 discretion in finding that Debtors had to re-notice their Proposed Plan. After reviewing
12 the legal conclusions *de novo*, the Court finds that Debtors are entitled to modify their
13 Chapter 13 Plan, but that the Bankruptcy Code requires Harley receive notice and an
14 opportunity to object to that amendment.

15 **B. Post-Petition Tax Return Requirement**

16 Debtors next argue that the Local Plan Form that requires debtors to provide post-
17 petition tax returns to the Trustee is unlawful. (Doc. 5 at 5). Debtors acknowledge that
18 there are mechanisms in the Code for the Trustee to obtain tax returns from Chapter 13
19 Debtors post-petition, namely 11 U.S.C. § 521(f). However, they essentially argue that
20 Section 521(f) is the only mechanism by which a debtor can be compelled to provide
21 post-petition tax returns to the Trustee. (*Id.* at 10-11). The Trustee argues that the
22 Bankruptcy Court permissibly enacted the new Local Plan Form, which requires Chapter
23 13 debtors to transfer their post-petition tax returns directly to the Trustee during the
24 pendency of their Plan, and further argues that 11 U.S.C. § 521(f) is not the exclusive
25 means for obtaining post-petition returns. (Doc. 17). The Bankruptcy Court agreed with
26 the Trustee and rejected Debtors' objections. (Doc. 9-1).

27 ² Alternatively, the Bankruptcy Court held that Debtors could seek a stipulation from
28 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.

1 The purpose of allowing the Trustee to access a debtor’s post-petition tax returns
2 “appears to be to allow interested parties like [the] Trustee to monitor a debtor’s financial
3 condition during the pendency of the chapter 13 case and to seek plan modification under
4 § 1329 if there are material increases in net income that can be captured for contribution.”
5 *In re Romeo*, 2018 WL 1463850, at *4 (B.A.P. 9th Cir. Mar. 23, 2018). Such use of post-
6 petition tax returns is consistent with the Bankruptcy Code. See *Fridley v. Forsythe (In*
7 *re Fridley)*, 380 B.R. 538, 544 (B.A.P. 9th Cir. 2007) (discussing the necessity of tax
8 returns in providing “information needed by a trustee . . . to decide whether to propose
9 hostile § 1329 plan modifications”); *Danielson v. Flores (In re Flores)*, 735 F.3d 855,
10 860 (9th Cir. 2013) (discussing permissibility of “modification of the plan to increase the
11 debtor’s payments if the debtor acquires disposable income during the pendency” of the
12 Plan term).

13 **2. History of Arizona’s Local Plan Form**

14 Bankruptcy courts have long been delegated authority from the district courts to
15 adopt local rules prescribing the conduct of business and to improve judicial economy.
16 Fed. R. Bankr. P. 9029. “Federal Rule of Bankruptcy Procedure 9029 governs the
17 making and amending of rules, and permits the district court to authorize the bankruptcy
18 judges of the district to make and amend rules of practice and procedure which are
19 consistent with . . . Acts of Congress and these rules and which do not prohibit or limit
20 the use of the Official Forms.” *In re Reyes*, 482 B.R. 603, 607 (D. Ariz. 2012). FRBP
21 9029 allows for the making of local bankruptcy rules so long as they are not inconsistent
22 with the more general Bankruptcy Rules. *Bersher Invs. v. Imperial Sav. Ass’n. (In re*
23 *Bersher Invs.)*, 95 B.R. 126, 129 (9th Cir. BAP 1988). Rule 83 of the Federal Rules of
24 Civil Procedure imposes the additional requirement that local rules may only be enacted
25 or amended “[a]fter giving public notice and an opportunity for comment.” Fed. R. Civ.
26 P. 83.

27 FRBP 3015, as amended in December 2017, requires that the National Plan Form
28 be used in all Chapter 13 cases, unless a Local Plan Form that complies with FRBP 3015

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

7 At issue here is the Local Plan Form which requires Chapter 13 debtors to submit
8 post-petition tax returns directly to the trustee each year. The Local Plan Form obviates
9 the need for a trustee to request those returns from the Bankruptcy Court every year in
10 every Chapter 13 case. As the trustee and the bankruptcy court identified, this provision
11 is by no means unique to the District of Arizona. In fact, 12 of the 15 Districts within the
12 Ninth Circuit have a post-petition tax return requirement, in addition to the requirements
13 of Section 521(f).³ Moreover, the provision substantially mirrors the tax return provision
14 in the National Plan Form, which is used by all jurisdictions in the United States unless
15 they have implemented a local plan form. (Official Form 113).

16 **3. Application of the Local Plan Form**

17 Debtors argue that Section 521(f) is the only means by which they can be forced to
18 turn over their tax returns, and thus, that the Local Plan Form violates the Bankruptcy
19 Code. Debtors’ arguments lack merit for a number of reasons. Nothing in Section 521(f)
20 indicates it is the *only* mechanism by which a trustee can obtain a debtor’s tax returns. A
21 plain reading of the statute indicates as much. Indeed, numerous courts have identified
22 many provisions of the Code, other than Section 521(f), that allow a trustee to obtain

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

1 post-petition returns from post-petition debtors. For instance, the Ninth Circuit
2 Bankruptcy Appellate Panel (“B.A.P.”) held that a trustee need not rely on Section 521(f)
3 to obtain debtor’s tax returns during a Rule 2004 examination, recognizing that Section
4 521(f) was not the exclusive means to obtain post-petition tax returns. *In re Romeo*, 2018
5 WL 1463850, at *6 (B.A.P. 9th Cir. Mar. 23, 2018); *see also In re Parker*, 488 B.R. 794,
6 798-99 (Bankr. N.D. Ga. 2013) (recognizing that courts have “consistently ruled” that tax
7 returns are discoverable documents pursuant to FRBP 7034 for use in an adversary
8 proceeding).

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

23 Moreover, the rule amendment was proposed to promote judicial efficiency and to
24 lower costs of the Chapter 13 process, and was enacted pursuant to the direction of FRBP
25 3015. The Bankruptcy Court found that the Local Plan Form keeps down the costs of the
26 process while promoting efficient administration of justice. (Doc. 9-1 at 9). Courts have
27 an interest in managing their dockets to ensure that justice is expended in an efficient and
28 fair manner to all litigants. *CMAX, Inc. v. Hall*, 300 F.2d 265 (9th Cir. 1962). Over

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

13 The Bankruptcy Court’s decision—after committee approval, a public comment
14 period, and approval by the bankruptcy judges of this District—to use the Plan Form is
15 wholly consistent with FRBP 3015 and 9029(b). Fed. R. Bankr. P. 9029(b) (“[a] judge
16 may regulate practice in any manner consistent with federal law, these rules, Official
17 Forms, and local rules of the district.”). Moreover, as the other courts who have
18 examined the issue have concluded, Section 521(f) is but one way for a trustee to obtain a
19 debtor’s post-petition tax information. *See Romeo*, 2018 WL 1463850, at *6. The use of
20 the similar tax return provision in the National Model Plan Form supports this
21 conclusion. The Court finds no defects in the process in which the Bankruptcy Court for
22 the District of Arizona implemented the Local Plan Form. Debtors cite no law to the
23 contrary and their arguments are unpersuasive.⁵

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

27 ⁵ The Bankruptcy Court’s Order noted that “it appears the Debtors intent in objecting to
28 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

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

12 **4. Newly Raised Issue**

13 In their Conclusion, Debtors argue that “this Panel”⁶ should reverse the lower
14 court and rule that the Director of the Administrative Office’s guidance on the safe
15 handling of tax returns “are applicable to Chapter 13 case trustees and local court’s

16 seeking modification pursuant to Code § 1329. Under the circumstances, any
17 encroachment on the Debtors’ rights is outweighed by the Trustee’s competing duty to
18 investigate and analyze the financial affairs of the Debtors and to seek to modify their
19 plan, if appropriate.” (Doc. 9-1 at 10). Indeed, the Court notes that Debtors’ Opening
20 Brief frames this case as the Trustee “demanding that copies of all post-petition Federal
21 and state income tax returns be delivered to his office on an annual basis.” (Doc. 5 at 8).
22 Debtors also argue that if this Court affirms the lower court, the Trustee “will be able to
23 sit in an office tower in Central Phoenix, have debtors send him copies of their state and
24 Federal income tax returns. . . Then the [Trustee] will use the confirmation order he
25 prepared, and forces debtors to sign, that he can search for changes in their annual
26 disposable income as binding on debtors. . . . This is his end game.” (Doc. 5 at 15).
27 While personal arguments such as these are not helpful to the Court in deciding the legal
28 issues, the Court notes 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 dismissed as interlocutory. (Doc. 5 at 7). The Court
assumes that the reference to “the Panel” is a mistaken reference to that judicial body.

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

7 **IV. Conclusion**

8 After a *de novo* review of the Bankruptcy Court’s legal conclusions, the Court
9 finds that the Bankruptcy Court correctly held that FRBP 2002 requires Debtors to
10 provide notice to Harley of any amended claim in the Proposed Plan. Additionally, the
11 Local Plan Form permissibly creates a reasonable and efficient way for the Trustee to
12 receive Debtors’ post-petition tax returns and does so in a way that complies with FRBP
13 3015 and other applicable law. The Bankruptcy Court did not err in so holding.
14 Therefore, the Court affirms the decision of the Bankruptcy Court.

15 Accordingly

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

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

19 Dated this 12th day of March, 2020.

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Honorable Diane J. Humetewa
United States District Judge