



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

Chief Judge Fredrick E. Clement
Sacramento Federal Courthouse
501 I Street, 7th Floor
Courtroom 28, Department A
Sacramento, California

DAY: TUESDAY
DATE: APRIL 23, 2024
CALENDAR: 9:00 A.M. CHAPTER 13 CASES

Unless otherwise ordered, all matters before Chief Judge Fredrick E. Clement shall be simultaneously: (1) **IN PERSON** at Sacramento Courtroom No. 28, (2) via **ZOOMGOV VIDEO**, (3) via **ZOOMGOV TELEPHONE**, and (4) via **COURTCALL**.

You may choose any of these options unless otherwise ordered or stated below.

All parties who wish to appear at a hearing remotely must sign up by 4:00 p.m. **one business** day prior to the hearing.

Information regarding how to sign up can be found on the **Remote Appearances** page of our website at:

<https://www.caeb.uscourts.gov/Calendar/RemoteAppearances>.

Each party who has signed up will receive a Zoom link or phone number, meeting I.D., and password via e-mail.

If the deadline to sign up has passed, parties who wish to appear remotely must contact the Courtroom Deputy for the Department holding the hearing.

Please also note the following:

- Parties in interest may connect to the video or audio feed free of charge and should select which method they will use to appear when signing up.
- Members of the public and the press appearing by **ZoomGov** may only listen in to the hearing using the zoom telephone number. Video appearances are not permitted.
- Members of the public and the press may not listen in to the trials or evidentiary hearings, though they may appear in person in most instances.

To appear remotely for law and motion or status conference proceedings, you must comply with the following guidelines and procedures:

- Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
- Review the court's [Zoom Procedures and Guidelines](#) for these, and additional instructions.
- Parties appearing via CourtCall are encouraged to review the [CourtCall Appearance Information](#).

If you are appearing by ZoomGov phone or video, please join at least 10 minutes prior to the start of the calendar and wait with your microphone muted until the matter is called.

Unauthorized Recording is Prohibited: Any recording of a court proceeding held by video or teleconference, including screen shots or other audio or visual copying of a hearing is prohibited. Violation may result in sanctions, including removal of court-issued media credentials, denial of entry to future hearings, or any other sanctions deemed necessary by the court. For more information on photographing, recording, or broadcasting Judicial Proceedings, please refer to Local Rule 173(a) of the United States District Court for the Eastern District of California.

PRE-HEARING DISPOSITION INSTRUCTIONS

RULINGS

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

"No Ruling" means the likely disposition of the matter will not be disclosed in advance of the hearing. The matter will be called; parties wishing to be heard should rise and be heard.

"Tentative Ruling" means the likely disposition, and the reasons therefor, are set forth herein. The matter will be called. Aggrieved parties or parties for whom written opposition was not required should rise and be heard. Parties favored by the tentative ruling need not appear. However, non-appearing parties are advised that the court may adopt a ruling other than that set forth herein without further hearing or notice.

"Final Ruling" means that the matter will be resolved in the manner, and for the reasons, indicated below. The matter will not be called; parties and/or counsel need not appear and will not be heard on the matter.

CHANGES TO PREVIOUSLY PUBLISHED RULINGS

On occasion, the court will change its intended ruling on some of the matters to be called and will republish its rulings. The parties and counsel are advised to recheck the posted rulings after 3:00 p.m. on the next business day prior to the hearing. Any such changed ruling will be preceded by the following bold face text: **"[Since posting its original rulings, the court has changed its intended ruling on this matter]"**.

ERRORS IN RULINGS

Clerical errors of an insignificant nature, e.g., nomenclature ("2017 Honda Accord," rather than "2016 Honda Accord"), amounts, ("\$880," not "\$808"), may be corrected in (1) tentative rulings by appearance at the hearing; or (2) final rulings by appropriate ex parte application. Fed. R. Civ. P. 60(a) *incorporated by* Fed. R. Bankr. P. 9024. All other errors, including those occasioned by mistake, inadvertence, surprise, or excusable neglect, must be corrected by noticed motion. Fed. R. Bankr. P. 60(b), *incorporated by* Fed. R. Bankr. P. 9023.

1. [21-23601](#)-A-13 **IN RE: POLLEN HEATH**
[JNV-9](#)

MOTION TO MODIFY PLAN
3-26-2024 [\[162\]](#)

JASON VOGELPOHL/ATTY. FOR DBT.

Final Ruling

Motion: Modify Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(1); written opposition filed by the trustee

Disposition: Denied

Order: Civil minute order

The motion requests modification of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1325, 1329; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(2). The Chapter 13 trustee opposes the motion, objecting to the modification.

Chapter 13 plan modification is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. “[T]he only limits on modification are those set forth in the language of the Code itself, coupled with the bankruptcy judge’s discretion and good judgment in reviewing the motion to modify.” *In re Powers*, 202 B.R. 618, 622 (B.A.P. 9th Cir. 1996).

PLAN FEASIBILITY

The proposed plan must be feasible. 11 U.S.C. § 1325(a)(6). Feasibility is a “factual determination” as to the plan’s “reasonable likelihood of success.” *First Nat’l Bank of Boston v. Fantasia (In re Fantasia)*, 211 B.R. 420, 423 (B.A.P. 1st Cir. 1997). The bankruptcy court needs to “be satisfied that the debtor has the present as well as the future financial capacity to comply with the terms of the plan.” *Id.* As one court summarized feasibility, “Thus, a plan is not feasible and is not confirmable if a debtor’s income will not support the plan’s proposed payments. *In re Barnes*, 275 B.R. 889, 894 (Bankr. E.D. Cal.2002) (“[T]he debtors showed no disposable income with which to fund a plan.... [T]he debtors have been unable to actually pay the amount projected ... to the trustee.”); *In re Bernardes*, 267 B.R. 690, 695 (Bankr. D.N.J. 2001) (“While the feasibility requirement is not rigorous ... the plan proponent must, at minimum, demonstrate that the Debtor’s income exceeds expenses by an amount sufficient to make the payments proposed by the plan.”); *In re Wilkinson*, 99 B.R. 366, 369 (Bankr. N.D. Ohio 1989) (“[D]ebtors will not be able to comply with the plan and make all payments thereunder.”).” *In re Buccolo*, 397 B.R. 527, 530 (Bankr. D.N.J. 2008), *aff’d*, 2009 WL 2132435 (D.N.J. July 13, 2009).

Plan Delinquency

The trustee indicates that the plan payments are delinquent in the amount of \$250.00 under the terms of the proposed modified plan. The motion will not be granted if the plan payments are not current.

Debtor Lacks Sufficient Income to Fund Plan

The proposed plan payments rely on the debtor's employment. Yet the declaration in support of the motion states:

I was laid-off from my job on July 28, 2023, and have not been able to obtain a job as the job market is highly competitive right now with all the tech layoffs in the bay area. I am currently receiving monthly support payments from my family of \$1,000 per month to make ends meet. I have over 23 years' experience in various administrative management positions. I've applied for quite a few positions, and I hope to be working by April of 2024. So, I will keep my payments at \$250.00 for March 2024 and April of 2024 until I find a new job. Then, with my new job, I expect to be able to make the stepped-up payment to \$579.00.

Declaration of Pollen Heath, 2:2-10, ECF No. 165.

There is no evidence that the debtor has obtained employment as anticipated. Amended Schedule I filed on January 26, 2024, does not evidence that the debtor has obtained employment as expected and a more recent Schedule I has not been filed. Amended Schedule I, ECF No. 146.

Evidence of Family Support is Insufficient

The debtor's declaration states that the debtor currently receives family support in the amount of \$1,000.00 per month. However, Amended Schedule I lists no income from family support. Moreover, there is no declaration from any family member indicating willingness and proving ability to support the debtor in such a significant monthly amount.

The court finds that the plan is not feasible under 11 U.S.C. § 1325(a)(6). The court will sustain the objection on this basis and need not reach the remaining issues raised in the trustee's opposition.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The debtor's motion to modify a chapter 13 plan has been presented to the court. Having considered the motion together with papers

filed in support and opposition to it, and having heard the arguments of counsel, if any, and good cause appearing, presented at the hearing,

IT IS ORDERED that the motion is denied. The court denies modification of the chapter 13 plan.

2. [24-20101](#)-A-13 **IN RE: LINDA CATRON**
[LC-5](#)

MOTION TO CONFIRM PLAN
2-26-2024 [[36](#)]

LINDA CATRON/ATTY. FOR MV.
RESPONSIVE PLEADING

Final Ruling

This case was dismissed on April 11, 2024. This motion is removed from the calendar as moot. No appearances are required.

3. [24-20501](#)-A-13 **IN RE: JUAN MARTINEZ**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
4-3-2024 [[13](#)]

SCOTT JOHNSON/ATTY. FOR DBT.

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: LBR 3015-1(c) (4), 9014-1(f) (2); no written opposition required

Disposition: Continued to June 4, 2024, at 9:00 a.m.

Order: Civil minute order

The Chapter 13 trustee objects to confirmation of the debtor(s) plan.

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor has the burden of proving that the plan complies with all statutory requirements of confirmation. *In re Andrews*, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*, 32 F.3d 405, 407-08 (9th Cir. 1994).

The court will continue the hearing on this objection to allow the parties to augment the evidentiary record.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

IT IS ORDERED that the hearing on this objection will be continued to June 4, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that the debtor(s) shall do one of the following:

(A) File a Statement of No Opposition. If the debtor(s) agree that the Chapter 13 trustee's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than May 7, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection not later than May 7, 2024; the response shall specifically address each issue raised in the trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than May 21, 2024. The evidentiary record will close after May 21, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the Chapter 13 trustee's objection by filing a modified plan, not later than May 7, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan; and

IT IS FURTHER ORDERED that if the debtor(s) fail to undertake any of the foregoing three options, the Chapter 13 trustee's objection will be sustained on the grounds stated in the objection without further notice or hearing.

4. [23-21905](#)-A-13 **IN RE: MARRAY BARNES**
[TLA-1](#)

MOTION TO MODIFY PLAN
3-19-2024 [\[24\]](#)

THOMAS AMBERG/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Modify Chapter 13 Plan

Notice: LBR 3015-1(d) (2), 9014-1(f) (1); written opposition filed by the trustee

Disposition: Continued to May 21, 2024, at 9:00 a.m.

Order: Civil minute order

The motion requests modification of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1325, 1329; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d) (2). The Chapter 13 trustee opposes the motion, objecting to the modification.

Chapter 13 plan modification is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a) (5) and 3015(g) and Local Bankruptcy Rule 3015-1. “[T]he only limits on modification are those set forth in the language of the Code itself, coupled with the bankruptcy judge’s discretion and good judgment in reviewing the motion to modify.” *In re Powers*, 202 B.R. 618, 622 (B.A.P. 9th Cir. 1996).

The Chapter 13 trustee objects to the proposed modified plan contending that the plan does not comply with 11 U.S.C. § 1325(a) (3) as the plan does not represent the debtor’s “best efforts”. Opposition, 2:18-19, ECF No. 31. The code section cited by the trustee requires that the plan be proposed in good faith. Yet the trustee argues that the proposed plan does not represent the debtor’s best efforts. The best-efforts analysis is argued under 11 U.S.C. § 1325(b) which is not applicable in motions to modify. The hearing will be continued to allow the Chapter 13 trustee to file additional argument and analysis regarding whether the plan is proposed in good faith, citing applicable case law, and providing analysis in that context.

The debtor has reduced the monthly plan payment and percentage paid to unsecured creditors, yet she has increased the voluntary retirement contribution. The declaration in support of the motion does not address this issue. Declaration of Debtor, ECF No. 26.

DEBTOR REPLY

On April 15, 2024, the debtor filed a reply which essentially proposes a stipulation to resolve the trustee’s opposition. Should the parties resolve the matter then the stipulation should be reduced to writing and filed with the court not later than May 7, 2024.

The court will continue the hearing to allow the parties to augment the evidentiary record.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

IT IS ORDERED that the hearing on this objection will be continued to May 21, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that no later than May 7, 2024, the Chapter 13 trustee shall file and serve additional argument and analysis in accordance with the court's ruling.

IT IS FURTHER ORDERED that no later than May 14, 2024, the debtor shall file and serve any additional evidence or argument in support of her motion to modify the plan. The evidentiary record will close after May 21, 2024.

IT IS FURTHER ORDERED that if the parties resolve the trustee's opposition, then a stipulation signed by the parties shall be filed with the court not later than May 7, 2024.

5. [23-24322](#)-A-13 **IN RE: CHARLES/TAWANA MILLER**
[GC-1](#)

MOTION TO CONFIRM PLAN
2-27-2024 [\[25\]](#)

JULIUS CHERRY/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: LBR 3015-1(c) (4), 9014-1(f) (2); no written opposition required

Disposition: Withdrawn by moving party

Order: Civil minute order

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor has the burden of proving that the plan complies with all statutory requirements of confirmation. *In re Andrews*, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*, 32 F.3d 405, 407-08 (9th Cir. 1994).

Uncertain of the debtors' intentions the Chapter 13 trustee opposed the proposed Chapter 13 Plan as the plan contains conflicting provisions regarding the treatment of certain creditors. The creditors: 24 Hour Fitness; Banfield Vet; Comcast; and Verizon, are provided for in Class 1 with \$0 to be paid monthly. The same

creditors are also provided for in Section 4.02 of the plan as executory contacts to be paid by the debtors.

TRUSTEE WITHDRAWAL - Fed. R. Civ. P. 41

The trustee filed a timely request to withdraw his objection under Fed. R. Civ. P. 41; Fed. R. Bankr. P. 9014, 7041.

Federal Rule of Civil Procedure 41 governs the circumstances where a party may withdraw a motion or objection. Fed. R. Civ. P. 41, *incorporated by* Fed. R. Bankr. P. 7041, 9014(c) (applying rule dismissal of adversary proceedings to contested matters). A motion or objection may be withdrawn without a court order only if it has not been opposed or by stipulation "signed by all parties who have appeared." Fed. R. Civ. P. 41(a)(1)(A). In all other instances, a motion or objection may be withdrawn "only by court order, on terms that the court considers proper." Fed. R. Civ. P. 41(a)(2).

On April 12, 2024, the parties filed a stipulation agreeing that the above creditors will be treated as executory contracts paid directly outside the plan by the debtors. In this instance, and only because the creditors were promised a \$0 monthly payment in Class 1, the court finds the change in classification creates no detriment to these creditors. The court will approve the stipulation.

Here, the Chapter 13 trustee has signaled his abandonment of his objection to confirmation. Neither the debtor(s), nor any creditor, has expressed opposition to the withdrawal of the trustee's motion. No unfair prejudice will result from withdrawal of the motion and the court will accede to the trustee's request.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

IT IS ORDERED that the objection is withdrawn.

6. [24-20627](#)-A-13 **IN RE: MINH DINH**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
4-3-2024 [[13](#)]

MOHAMMAD MOKARRAM/ATTY. FOR DBT.

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: LBR 3015-1(c)(4), 9014-1(f)(2); no written opposition required

Disposition: Continued to June 4, 2024, at 9:00 a.m.

Order: Civil minute order

The Chapter 13 trustee objects to confirmation of the debtor(s) plan.

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor has the burden of proving that the plan complies with all statutory requirements of confirmation. *In re Andrews*, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*, 32 F.3d 405, 407-08 (9th Cir. 1994).

The court will continue the hearing on this objection to allow the parties to augment the evidentiary record.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

IT IS ORDERED that the hearing on this objection will be continued to June 4, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that the debtor(s) shall do one of the following:

(A) File a Statement of No Opposition. If the debtor(s) agree that the Chapter 13 trustee's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than May 7, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection not later than May 7, 2024; the response shall specifically address each issue raised in the trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support

of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than May 21, 2024. The evidentiary record will close after May 21, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the Chapter 13 trustee's objection by filing a modified plan, not later than May 7, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan; and

IT IS FURTHER ORDERED that if the debtor(s) fail to undertake any of the foregoing three options, the Chapter 13 trustee's objection will be sustained on the grounds stated in the objection without further notice or hearing.

7. [23-22835](#)-A-13 **IN RE: KUAJI HILL**

MOTION TO DISMISS CASE
4-8-2024 [[86](#)]

GORDON BONES/ATTY. FOR DBT.
DEBTOR DISCHARGED: 01/10/24

Final Ruling

Motion: Dismiss case

Notice: LBR 9014-1(f) (2); no written opposition required

Disposition: Denied without prejudice

Order: Civil minute order

The debtor seeks an order dismissing this case under 11 U.S.C. § 1307(b). The case has previously been converted from a Chapter 7. For the following reasons the court will deny the motion without prejudice.

NOTICE

"The due process requirements for notice are relatively minimal; they merely require notice 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" *In re 701 Mariposa Project, LLC*, 514 B.R. 10, 15 (B.A.P. 9th Cir. 2014) (citing *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 94 L.Ed. 865 (1950)).

LBR 9014-1(f)

In the Eastern District of California notice of a motion must comply with the requirement of LBR 9014-1(f) (1), (2). The rule allows a choice of two different notice periods. LBR 9014-1(f) (1) requires 28 days' notice of the motion and written opposition to be filed

with the court and served on the moving party not later than 14 days prior to the hearing on the motion. Conversely, LBR 9014-1(f)(2) requires only 14 days' notice of the motion and does not require the opposing party to file and serve written opposition prior to the hearing on the motion. See, LBR 9014-1(f)(1), (2).

LBR 9014-1(d)(3)(B)(i)

The notice of hearing shall advise potential respondents *whether and when written opposition must be filed*, the deadline for filing and serving it, and the names and addresses of the persons who must be served with any opposition.

. . .

LBR 9014-1(d)(3)(B) (emphasis added).

The notice filed and served in this matter fails to state whether written opposition is required, or to indicate under what subsection of LBR 9014-1(f) the motion was brought. See, Notice, ECF No. 86. Accordingly, the notice does not comply with LBR 9014-1(d)(3)(B).

MOTION MUST BE SUPPORTED BY CREDIBLE EVIDENCE

Every motion or other request for relief shall be accompanied by evidence establishing its factual allegations and demonstrating that the movant is entitled to the relief requested. Affidavits and declarations shall comply with Fed. R. Civ. P. 56(c)(4).

LBR 9014-1(d)(3)(D).

No declaration has been filed in support of this motion. Thus, the motion does not comply with LBR 9014-1(d)(3)(D).

VIOLATION OF LBR 9014-1(c)(1)

The lack of a docket control number on the papers filed in this matter violates the court's local rules. LBR 9014-1(c)(1) mandates the use of docket control numbers to be used on each document filed with the bankruptcy court in this district, including proofs of service.

SERVICE AND NOTICE

As of November 1, 2022, the court adopted Local Bankruptcy Rules 2002-3, 9036-1 and 7005-1 (requiring attorneys and trustees to use a standardized Certificate of Service, EDC 7-005).

The form certificate of service is intended to allow parties to memorialize service efficiently and accurately, and to aid the court in ensuring sufficient service is achieved in each proceeding.

Matrix

Unless service is on six or fewer parties in interest and a custom service list is used or the persons served are not on the Clerk of the Court's Matrix, the Certificate of Service Form shall have attached to it the Clerk of the Court's Official Matrix, as appropriate: (1) for the case or the adversary proceeding; (2) list of ECF Registered Users; (3) list of persons who have filed Requests for Special Notice; and/or (4) the list of Equity Security Holders.

LBR 7005-1(a).

In this case the matrix attached to the certificate of service is not the clerk's matrix. See Certificate of Service, ECF No. 87. The certificate of service states that all creditors and parties in interest were served with the motion. *Id.*, Section 5. However, there are 27 creditors listed in this case and only 6 parties were served with the motion.

TRUSTEE NOT SERVED WITH MOTION

The trustee must be served with the motion, Fed. R. Bankr. P. 9013. However, the trustee was not served with the motion as required.

For each of the reasons indicated above the court will deny the motion without prejudice.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

The debtor's Motion to Dismiss has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

8. [23-24537](#)-A-13 **IN RE: GEORGINA TAMPLIN**
[MET-1](#)

CONTINUED MOTION TO AVOID LIEN OF VIDAL CEJA AND ERIKA
PUENTES-CEJA
1-13-2024 [[13](#)]

MARY TERRANELLA/ATTY. FOR DBT.
RESPONSIVE PLEADING

***[Since posting its original rulings, the court has changed its intended ruling on this matter].**

Final Ruling

Motion: Avoid Lien that Impairs Exemption
Notice: Continued from February 27, 2024
Disposition: Granted
Order: Prepared by moving party

Subject Property: 4983 Tamplen Lane, Winters, California

Judicial Lien Avoided: \$92,500.00 - Vidal Ceja and Erika Puentes-Ceja

All Other Liens:

- Deed of Trust \$507,064 - Dennis Lanni
- County of Solano \$6,000

Exemption: \$164,436

Value of Property: \$677,500

The debtor seeks an order avoiding the judicial lien of Vidal Ceja and Erika Puentes-Ceja under 11 U.S.C. § 522(f). The hearing on this motion was continued to allow the opposing creditors to file additional evidence and argument.

SERVICE

On January 25, 2024, the opposing creditors filed an opposition to the motion to avoid the lien, ECF No. 23. The opposition contended: (1) that motion had not been addressed to the creditors' correct address; (2) that they live in a small town and the postman delivered the motion to the opposing creditors on January 19, 2024, at the correct address; (3) that the creditors opposed to motion to avoid the lien; (4) that the creditors opposed confirmation of the plan; and (5) that the creditors desired additional time to seek legal counsel. No legal basis was presented as opposition to the motion to avoid lien. Neither did the creditors appear at the initial hearing on the motion.

Accordingly, the court continued the hearing on the motion and ordered as follows:

IT IS ORDERED that the motion is continued to April 23, 2024, at 9:00 a.m. No later than March 26, 2024, the opposing creditors shall file and serve a written opposition to the motion; the opposition shall

specifically address each issue raised in the debtor's motion to avoid judicial lien and include admissible evidence in support of the creditor's position. IT IS FURTHER ORDERED that the debtor(s) file a reply, if any, no later than April 9, 2024. The evidentiary record will close after April 9, 2024.

Order, ECF No. 37.

The opposing creditors failed to file any further opposition or evidence. On April 5, 2024, the creditors filed a change of address indicating that their new address was 716 Valley Oak Drive, Winters, California, 95694, ECF No. 52.

On April 9, 2024, the debtor filed and served further evidence and argument in support of the motion. The debtor's pleadings were served on the creditors at the address specified in the change of address filed on April 5, 2024, as required.

The debtor contends that service of the motion was proper. The moving papers were served on the opposing creditors at their address as indicated on the Abstract of Judgment, Exhibit A, ECF No. 16.

Because the moving papers were served by certified mail, the debtor also filed and served exhibits which show the receipt of the motion by the opposing creditors. Exhibit A is a copy of the certified mail receipt signed by Vidal Ceja on January 19, 2024. Exhibit A, ECF No. 54. Subsequent pleadings were served on the opposing creditors at the address indicated in the change of address filed by the creditors.

The court finds that service on the opposing creditors is sufficient.

SERVICE AND NOTICE

As of November 1, 2022, the court adopted Local Bankruptcy Rules 2002-3, 9036-1 and 7005-1 (requiring attorneys and trustees to use a standardized Certificate of Service, EDC 7-005).

The form certificate of service is intended to allow parties to memorialize service efficiently and accurately, and to aid the court in ensuring sufficient service is achieved in each proceeding.

In this case, as indicated above in this ruling, service of the motion was proper, however the memorialization of the service is incorrect.

Rule 7004 Service

Service of the motion on the lienholder is required in accordance with Rule 7004. While service on the lienholder is properly accomplished by first class mail under both Fed. R. Civ. P. 5 and Fed. R. Bankr. P. 7004, the Certificate of Service in this matter should indicate that service is made on the lienholder pursuant to

Rule 7004. Part 6 is incorrectly completed. Here the certificate only indicates service under Fed. R. Civ. P. 5, which is appropriate for other parties such as the special notice creditors, and the United States Trustee. See Certificate of Service, ECF No. 18.

CREDITOR REPLY

On April 18, 2024, opposing creditor Erika Ceja, filed a reply to the motion which reiterates her contention that the debtor has not fully disclosed all income or assets. Reply, ECF No. 58. The creditor's contentions do not provide any evidence or argument refuting the instant motion to avoid the creditor's judicial lien but are rather appropriately raised in opposition to the debtor's motion to confirm the Chapter 13 plan. The motion to confirm the plan is currently set for hearing on May 7, 2024, at 9:00 a.m. Accordingly, the court will proceed with the motion to avoid the judicial lien.

LIEN AVOIDANCE

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

The responding party's judicial lien, all other liens, and the exemption amount together exceed the property's value by an amount greater than or equal to the judicial lien. As a result, the responding party's judicial lien will be avoided entirely.

9. [24-20344](#)-A-13 **IN RE: RANDY HOWARD**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
4-3-2024 [\[24\]](#)

PETER MACALUSO/ATTY. FOR DBT.
4/9/2024 FINAL INSTALLMENT FEES PAID \$213

Final Ruling

As the installment fees have been paid in full, the order to show cause is discharged. The case will remain pending.

10. [19-27553](#)-A-13 **IN RE: DIANA PRASAD**
[CYB-1](#)

MOTION TO APPROVE LOAN MODIFICATION
3-23-2024 [\[39\]](#)

CANDACE BROOKS/ATTY. FOR DBT.

No Ruling

11. [23-24154](#)-A-13 **IN RE: WANMUENG WADKHIAN**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
3-25-2024 [\[80\]](#)

MATTHEW DECAMINADA/ATTY. FOR DBT.

Final Ruling

This case was dismissed on April 11, 2024. This order to show cause is discharged as moot. No appearances are required.

12. [24-20754](#)-A-13 **IN RE: SUSAN OLIVER**
[MOH-1](#)

MOTION TO VALUE COLLATERAL OF GLOBAL FINANCE GROUP, INC.
4-9-2024 [[28](#)]

MICHAEL HAYS/ATTY. FOR DBT.

Final Ruling

Motion: Value Collateral

Notice: LBR 9014-1(f) (2); No written opposition required

Disposition: Continued to June 18, 2024, at 9:00 a.m.

Order: Civil Minute Order

The debtor seeks an order valuing the collateral of Global Finance Group, Inc. The court notes that this creditor has filed an objection to confirmation of the proposed plan based in part on a dispute regarding the value of the collateral. Accordingly, the court will continue the hearing on this matter to coincide with the hearing on the objection to confirmation.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

IT IS ORDERED that the hearing on this motion will be continued to June 18, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that the respondent creditor shall file and serve written opposition to the objection, if any, not later than May 14, 2024; the opposition shall include admissible evidence in support of the creditor's position. If the creditor files an opposition to the motion, then the debtor shall file and serve a reply, if any, no later than May 28, 2024. The evidentiary record will close after May 28, 2024.

IT IS FURTHER ORDERED that if the parties resolve the motion, then a stipulation shall be filed with the court no later than May 28, 2024.

13. [21-22861](#)-A-13 **IN RE: MEGAN EKOMAYE**
[BLG-3](#)

MOTION TO MODIFY PLAN
3-12-2024 [\[64\]](#)

CHAD JOHNSON/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Modify Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by movant, approved by the trustee

Subject: Chapter 13 Plan, March 12, 2024

DEFAULT OF RESPONDENT

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, incorporated by Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The debtor(s) seek approval of the proposed modified Chapter 13 Plan. The plan is supported by Schedules I and J filed on March 12, 2024, ECF No. 70. The Chapter 13 trustee has filed a non-opposition to the motion, ECF No. 78.

CHAPTER 13 PLAN MODIFICATION

Chapter 13 plan modification is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. “[T]he only limits on modification are those set forth in the language of the Code itself, coupled with the bankruptcy judge’s discretion and good judgment in reviewing the motion to modify.” *In re Powers*, 202 B.R. 618, 622 (B.A.P. 9th Cir. 1996).

Chapter 13 debtors seeking plan modification have the burden of proving that all requirements of § 1322(a) and (b) and § 1325(a) have been met. See 11 U.S.C. §§ 1322(a)-(b), 1325(a), 1329(b)(1); see also *In re Powers*, 202 B.R. at 622 (“[Section] 1329(b)(1) protects the parties from unwarranted modification motions by ensuring that the proposed modifications satisfy the same standards as required of the initial plan.”); see also *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994); *In re Andrews*, 49 F.3d 1404, 1408 (9th Cir. 1995).

The court finds that the debtor has sustained this burden of proof. The court will grant the motion and approve the modification.

14. [21-22861](#)-A-13 **IN RE: MEGAN EKOMAYE**
[DPC-2](#)

CONTINUED MOTION TO DISMISS CASE
2-15-2024 [[60](#)]

CHAD JOHNSON/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case
Notice: Continued from March 26, 2024
Disposition: Denied
Order: Civil minute order

The hearing on this motion was continued from March 26, 2024, to allow for hearing on the debtor's motion to modify the chapter 13 plan. The motion to modify, (BLG-3) has been granted.

Accordingly, the court will deny the motion to dismiss.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The trustee's motion to dismiss has been presented to the court. Having considered the motion, the opposition, responses, and good cause appearing,

IT IS ORDERED that the motion is denied.

15. [23-23663](#)-A-13 **IN RE: VALERIE WILLIAMS**
[TLA-1](#)

MOTION TO CONFIRM PLAN
3-6-2024 [[38](#)]

THOMAS AMBERG/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Confirm Chapter 13 Plan

Notice: LBR 3015-1(d)(1), 9014-1(f)(1); written opposition filed by the trustee

Disposition: Denied

Order: Civil minute order

The motion requests confirmation of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1323, 1325; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(1)-(2). The Chapter 13 trustee opposes the motion, objecting to confirmation.

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor has the burden of proving that the plan complies with all statutory requirements of confirmation. *In re Andrews*, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*, 32 F.3d 405, 407-08 (9th Cir. 1994).

PLAN FEASIBILITY

The proposed plan must be feasible. 11 U.S.C. § 1325(a)(6). Feasibility is a "factual determination" as to the plan's "reasonable likelihood of success." *First Nat'l Bank of Boston v. Fantasia (In re Fantasia)*, 211 B.R. 420, 423 (B.A.P. 1st Cir. 1997). The bankruptcy court needs to "be satisfied that the debtor has the present as well as the future financial capacity to comply with the terms of the plan." *Id.* As one court summarized feasibility, "Thus, a plan is not feasible and is not confirmable if a debtor's income will not support the plan's proposed payments. *In re Barnes*, 275 B.R. 889, 894 (Bankr. E.D. Cal.2002) ("[T]he debtors showed no disposable income with which to fund a plan.... [T]he debtors have been unable to actually pay the amount projected ... to the trustee."); *In re Bernardes*, 267 B.R. 690, 695 (Bankr. D.N.J. 2001) ("While the feasibility requirement is not rigorous ... the plan proponent must, at minimum, demonstrate that the Debtor's income exceeds expenses by an amount sufficient to make the payments proposed by the plan."); *In re Wilkinson*, 99 B.R. 366, 369 (Bankr. N.D. Ohio 1989) ("[D]ebtors will not be able to comply with the plan and make all payments thereunder.")" *In re Buccolo*, 397 B.R. 527, 530 (Bankr. D.N.J. 2008), *aff'd*, 2009 WL 2132435 (D.N.J. July 13, 2009).

Plan Delinquency

The trustee indicates that the plan payments are delinquent in the amount of \$7,000, with another payment of \$7,000 due on April 25, 2024. The plan cannot be confirmed if the plan payments are not current.

Date of Proposed Refinance Unclear

The proposed plan calls for the refinance of real property. However, it is unclear from the working in the additional provisions if the refinance will be completed by May 2025, or by the end of May 2025.

DEBTOR REPLY

On April 15, 2024, the debtor filed a reply supported by a supplemental declaration of the debtor. The reply indicates that the plan payment is now current and clarifies that the debtor's intention is to refinance real property by the end of May 2025.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The debtor's motion to confirm a chapter 13 plan has been presented to the court. Having considered the motion together with papers filed in support and opposition to it, and having heard the arguments of counsel, if any, and good cause appearing, presented at the hearing,

IT IS ORDERED that the motion is denied. The court denies confirmation of the chapter 13 plan.

16. [24-20663](#)-A-13 **IN RE: BRANDON/SHINYA GARLOFF**
[CAS-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY BMW BANK OF NORTH
AMERICA
4-4-2024 [[19](#)]

TIMOTHY WALSH/ATTY. FOR DBT.
CHERYL SKIGIN/ATTY. FOR MV.

Final Ruling

Objection: Creditor's Objection to Confirmation of Plan

Notice: LBR 3015-1(c)(4), 9014-1(f)(2); no written opposition
required

Disposition: Continued to June 4, 2024, at 9:00 a.m.

Order: Civil minute order

Creditor, BMW Bank of North America, objects to confirmation of the
debtor(s) plan.

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325
and by Federal Rule of Bankruptcy Procedure 2002(b) and Local
Bankruptcy Rule 3015-1. The debtor has the burden of proving that
the plan complies with all statutory requirements of confirmation.
In re Andrews, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*,
32 F.3d 405, 407-08 (9th Cir. 1994).

The court will continue the hearing on this objection to allow the
parties to augment the evidentiary record.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms
substantially to the following form:

IT IS ORDERED that the hearing on this objection will be continued
to June 4, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that the debtor(s) shall do one of the
following:

(A) File a Statement of No Opposition. If the debtor(s) agree
that the creditor's objection is well taken, the debtor(s) shall
concede the merits and file a statement of non-opposition no later
than May 7, 2024. L.R. 230(c) ("A responding party who has no
opposition to the granting of the motion shall serve and file a
statement to that effect..."); LBR 1001-1(c)-(d) (omitting the
applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s)
disagrees with the creditor's objection, the debtor(s) shall file
and serve a written response to the objection not later than May 7,
2024; the response shall specifically address each issue raised in

the creditor's objection to confirmation, state whether the issue is disputed or undisputed, **and include admissible evidence in support of the debtor's position.** If the debtor(s) file a response under paragraph 3(B) of this order, then the creditor shall file and serve a reply, if any, no later than May 21, 2024. The evidentiary record will close after May 21, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the creditor's objection by filing a modified plan, not later than May 7, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan; and

IT IS FURTHER ORDERED that if the debtor(s) fail to undertake any of the foregoing three options, the objection will be sustained on the grounds stated in the objection without further notice or hearing.

17. [24-20663](#)-A-13 **IN RE: BRANDON/SHINYA GARLOFF**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK
4-3-2024 [\[15\]](#)

TIMOTHY WALSH/ATTY. FOR DBT.

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: LBR 3015-1(c)(4), 9014-1(f)(2); no written opposition required

Disposition: Continued to June 4, 2024, at 9:00 a.m.

Order: Civil minute order

The Chapter 13 trustee objects to confirmation of the debtor(s) plan.

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor has the burden of proving that the plan complies with all statutory requirements of confirmation. *In re Andrews*, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*, 32 F.3d 405, 407-08 (9th Cir. 1994).

The court will continue the hearing on this objection to allow the parties to augment the evidentiary record.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

IT IS ORDERED that the hearing on this objection will be continued to June 4, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that the debtor(s) shall do one of the following:

(A) File a Statement of No Opposition. If the debtor(s) agree that the Chapter 13 trustee's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than May 7, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection not later than May 7, 2024; the response shall specifically address each issue raised in the trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than May 21, 2024. The evidentiary record will close after May 21, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the Chapter 13 trustee's objection by filing a modified plan, not later than May 7, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan; and

IT IS FURTHER ORDERED that if the debtor(s) fail to undertake any of the foregoing three options, the Chapter 13 trustee's objection will be sustained on the grounds stated in the objection without further notice or hearing.

18. [24-21076](#)-A-13 **IN RE: JENNIFER BOSS**
[MRL-1](#)

MOTION TO VALUE COLLATERAL OF GM FINANCIAL, LLC
4-5-2024 [\[16\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.

Tentative Ruling

Motion: Value Collateral; Motor Vehicle

Notice: LBR 9014-1(f)(2); no written opposition required

Disposition: Granted

Order: Civil minute order

Subject: 2019 Chevrolet Tahoe Premier Sport Utility

Value: \$31,500

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the respondent is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The debtor seeks an order valuing the collateral of GM Financial, LLC.

VALUATION OF COLLATERAL

Chapter 13 debtors may value collateral by noticed motion. Fed. R. Bankr. P. 3012. Section 506(a) of the Bankruptcy Code provides, "An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property" and is unsecured as to the remainder. 11 U.S.C. § 506(a). For personal property, value is defined as "replacement value" on the date of the petition. *Id.* § 506(a)(2). For "property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." *Id.* The costs of sale or marketing may not be deducted. *Id.*

A debtor's ability to value collateral consisting of a motor vehicle is limited by the terms of the hanging paragraph of § 1325(a). See 11 U.S.C. § 1325(a) (hanging paragraph). Under this statute, a lien secured by a motor vehicle cannot be stripped down to the collateral's value if: (i) the lien securing the claim is a purchase money security interest, (ii) the debt was incurred within the 910-day period preceding the date of the petition, and (iii) the motor vehicle was acquired for the debtor's personal use. 11 U.S.C. § 1325(a) (hanging paragraph).

In this case, the debtor seeks to value collateral consisting of a motor vehicle described as a 2019 Chevrolet Tahoe Premier Sport Utility. The debt owed to the respondent is secured by a purchase money security interest. See 11 U.S.C. § 1325(a) (hanging paragraph). The court values the vehicle at \$31,500.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The debtor's motion to value collateral consisting of a motor vehicle has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The personal property collateral described as a 2019 Chevrolet Tahoe Premier Sport Utility has a value of \$31,500. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$31,500 equal to the value of the collateral that is unencumbered by senior liens. The respondent has a general unsecured claim for the balance of the claim.

19. [24-20579](#)-A-13 **IN RE: ABDUL MUNIF**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
4-3-2024 [\[29\]](#)

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: LBR 3015-1(c)(4), 9014-1(f)(2); no written opposition required

Disposition: Continued to June 4, 2024, at 9:00 a.m.

Order: Civil minute order

The Chapter 13 trustee objects to confirmation of the debtor(s) plan.

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor has the burden of proving that the plan complies with all statutory requirements of confirmation. *In re Andrews*, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*, 32 F.3d 405, 407-08 (9th Cir. 1994).

The court will continue the hearing on this objection to allow the parties to augment the evidentiary record.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

IT IS ORDERED that the hearing on this objection will be continued to June 4, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that the debtor(s) shall do one of the following:

(A) File a Statement of No Opposition. If the debtor(s) agree that the Chapter 13 trustee's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than May 7, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection not later than May 7, 2024; the response shall specifically address each issue raised in the trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than May 21, 2024. The evidentiary record will close after May 21, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the Chapter 13 trustee's objection by filing a modified plan, not later than May 7, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan; and

IT IS FURTHER ORDERED that if the debtor(s) fail to undertake any of the foregoing three options, the Chapter 13 trustee's objection will be sustained on the grounds stated in the objection without further notice or hearing.

20. [24-20579](#)-A-13 **IN RE: ABDUL MUNIF**
[DVW-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK NATIONAL
ASSOCIATION
3-28-2024 [[26](#)]

DIANE WEIFENBACH/ATTY. FOR MV.

Final Ruling

Objection: Creditor's Objection to Confirmation of Plan

Notice: LBR 3015-1(c) (4), 9014-1(f) (2); no written opposition
required

Disposition: Continued to June 4, 2024, at 9:00 a.m.

Order: Civil minute order

Creditor, U.S. Bank National Association, objects to confirmation of
the debtor(s) plan.

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325
and by Federal Rule of Bankruptcy Procedure 2002(b) and Local
Bankruptcy Rule 3015-1. The debtor has the burden of proving that
the plan complies with all statutory requirements of confirmation.
In re Andrews, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*,
32 F.3d 405, 407-08 (9th Cir. 1994).

The court will continue the hearing on this objection to allow the
parties to augment the evidentiary record.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms
substantially to the following form:

IT IS ORDERED that the hearing on this objection will be continued
to June 4, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that the debtor(s) shall do one of the
following:

(A) File a Statement of No Opposition. If the debtor(s) agree
that the creditor's objection is well taken, the debtor(s) shall
concede the merits and file a statement of non-opposition no later
than May 7, 2024. L.R. 230(c) ("A responding party who has no
opposition to the granting of the motion shall serve and file a
statement to that effect..."); LBR 1001-1(c)-(d) (omitting the
applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s)
disagrees with the creditor's objection, the debtor(s) shall file
and serve a written response to the objection not later than May 7,
2024; the response shall specifically address each issue raised in
the creditor's objection to confirmation, state whether the issue is

disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the creditor shall file and serve a reply, if any, no later than May 21, 2024. The evidentiary record will close after May 21, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the creditor's objection by filing a modified plan, not later than May 7, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan; and

IT IS FURTHER ORDERED that if the debtor(s) fail to undertake any of the foregoing three options, the objection will be sustained on the grounds stated in the objection without further notice or hearing.

21. [24-20579](#)-A-13 **IN RE: ABDUL MUNIF**
[JCW-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY US BANK TRUST NATIONAL
ASSOCIATION
4-4-2024 [\[33\]](#)

JENNIFER WONG/ATTY. FOR MV.

Final Ruling

Objection: Creditor's Objection to Confirmation of Plan

Notice: LBR 3015-1(c) (4), 9014-1(f) (2); no written opposition required

Disposition: Continued to June 4, 2024, at 9:00 a.m.

Order: Civil minute order

Creditor, U.> Bank Trust, National Association, objects to confirmation of the debtor(s) plan.

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor has the burden of proving that the plan complies with all statutory requirements of confirmation. *In re Andrews*, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*, 32 F.3d 405, 407-08 (9th Cir. 1994).

The court will continue the hearing on this objection to allow the parties to augment the evidentiary record.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

IT IS ORDERED that the hearing on this objection will be continued to June 4, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that the debtor(s) shall do one of the following:

(A) File a Statement of No Opposition. If the debtor(s) agree that the creditor's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than May 7, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagrees with the creditor's objection, the debtor(s) shall file and serve a written response to the objection not later than May 7, 2024; the response shall specifically address each issue raised in the creditor's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the creditor shall file and serve a reply, if any, no later than May 21, 2024. The evidentiary record will close after May 21, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the creditor's objection by filing a modified plan, not later than May 7, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan; and

IT IS FURTHER ORDERED that if the debtor(s) fail to undertake any of the foregoing three options, the objection will be sustained on the grounds stated in the objection without further notice or hearing.

22. [24-20680](#)-A-13 **IN RE: THOMAS GALLARDO**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
3-29-2024 [[15](#)]

CANDACE BROOKS/ATTY. FOR DBT.
4/1/2024 INSTALLMENT FEE PAID \$157

Final Ruling

As the installment fee has been paid, the order to show cause is discharged. The case will remain pending.

23. [23-23286](#)-A-13 **IN RE: SUMMER PARRISH**
[CRG-2](#)

MOTION TO APPROVE LOAN MODIFICATION AND/OR MOTION TO
AUTHORIZE RECORDING OF DEED OF TRUST
3-11-2024 [\[42\]](#)

CARL GUSTAFSON/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Approve New Debt

Notice: LBR 9014-1(f)(1); non-opposition filed by trustee

Disposition: Granted

Order: Prepared by moving party

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The debtor seeks to incur new debt to pay mortgage arrears owed on the property located at 9383 Mira del Rio Drive, Sacramento, California. The Chapter 13 trustee has filed a non-opposition to the motion, ECF No. 47. The relevant terms are as follows.

To remedy her default, Debtor worked with Freedom Mortgage Corporation to obtain a loan modification and cure the Arrearage. Freedom Mortgage Corporation agreed to a loan modification in the form of an interest-free note (the "Note") in favor of the Secretary of the U.S. Department of Housing and Urban Development, providing that Debtor shall pay the Arrearage at the conclusion of the mortgage term. As a result of this loan modification, Debtor will be current on her mortgage payment with the next payment due April 1, 2024. To secure the interest-free Note, Freedom Mortgage Corporation requested the Debtor to sign a subordinate deed of trust (the "Deed of Trust") on Debtor's principal residence. This subordinate Deed of Trust secures the note, which requires no payments until the mortgage is paid in full and/or the property is sold.

Motion, 2:4-13, ECF No. 42.

Given these terms there is no impact on the debtors' confirmed plan. as the plan calls for payments to the lender in Class 4.

The court will grant the motion and approve the new debt.

24. [23-24390](#)-A-13 **IN RE: SHERRY UNMACK-HAINES**
[CK-1](#)

MOTION TO MODIFY PLAN
3-19-2024 [18]

CATHERINE KING/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Modify Chapter 13 Plan

Notice: LBR 3015-1(d) (2), 9014-1(f) (1); written opposition filed by the trustee

Disposition: Denied

Order: Civil minute order

The motion requests modification of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1325, 1329; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d) (2). The Chapter 13 trustee opposes the motion, objecting to the modification.

Chapter 13 plan modification is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a) (5) and 3015(g) and Local Bankruptcy Rule 3015-1. “[T]he only limits on modification are those set forth in the language of the Code itself, coupled with the bankruptcy judge’s discretion and good judgment in reviewing the motion to modify.” *In re Powers*, 202 B.R. 618, 622 (B.A.P. 9th Cir. 1996).

PLAN FEASIBILITY

The proposed plan must be feasible. 11 U.S.C. § 1325(a) (6). Feasibility is a “factual determination” as to the plan’s “reasonable likelihood of success.” *First Nat’l Bank of Boston v. Fantasia (In re Fantasia)*, 211 B.R. 420, 423 (B.A.P. 1st Cir. 1997). The bankruptcy court needs to “be satisfied that the debtor has the present as well as the future financial capacity to comply with the terms of the plan.” *Id.* As one court summarized feasibility, “Thus, a plan is not feasible and is not confirmable if a debtor’s income will not support the plan’s proposed payments. *In re Barnes*, 275 B.R. 889, 894 (Bankr. E.D. Cal.2002) (“[T]he debtors showed no disposable income with which to fund a plan.... [T]he debtors have been unable to actually pay the amount projected ... to the trustee.”); *In re Bernardes*, 267 B.R. 690, 695 (Bankr. D.N.J. 2001) (“While the feasibility requirement is not rigorous ... the plan proponent must, at minimum, demonstrate that the Debtor’s income exceeds expenses by an amount sufficient to make the payments proposed by the plan.”); *In re Wilkinson*, 99 B.R. 366, 369 (Bankr. N.D. Ohio 1989) (“[D]ebtors will not be able to comply with the plan and make all payments thereunder.”).” *In re Buccolo*, 397 B.R. 527, 530 (Bankr. D.N.J. 2008), *aff’d*, 2009 WL 2132435 (D.N.J. July 13, 2009).

Conflicting Evidence

On March 19, 2024, the debtor filed Amended Schedule J, ECF No. 16. Also on March 19, 2024, the debtor submitted as Exhibit B, another Amended Schedule J which is signed under penalty of perjury, ECF No. 21.

There are numerous conflicts between the Schedules which were filed as follows:

Expenses	Rent	Utilities	Food	Transportation	Vehicle Insurance
ECF No. 16	\$405.00	\$233.00	\$300.00	\$180.00	\$132.00
ECF No. 21	\$352.00	\$148.00	\$350.00	\$220.00	\$150.00

The debtor has failed to provide sufficient evidence proving that the proposed plan is feasible. Accordingly, the court will deny the motion. The court notes that accurate schedules are part of the debtor's prima facie case for plan modification and must be filed at the outset of the motion.

NO LEGAL AUTHORITY CITED FOR RELIEF REQUESTED

"A request for an order, except when an application is authorized by the rules, shall be by written motion, unless made during a hearing. The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought." Fed. R. Bankr. P. 9013.

- A) *Motion or Other Request for Relief.* The application, motion, contested matter, or other request for relief shall set forth the relief or order sought and shall state with particularity the factual and legal grounds therefor. *Legal grounds for the relief sought means citation to the statute, rule, case, or common law doctrine that forms the basis of the moving party's request but does not include a discussion of those authorities or argument for their applicability.*

LBR 9014-1(D) (3) (A) (emphasis added).

The motion fails to cite any legal authority for confirmation of the plan, ECF No. 18. The motion will be denied.

DEBTOR REPLY

On April 17, 2024, the debtor filed a reply, ECF No. 26. The reply states that the exhibit which was filed in support of the motion was a clerical error. However, there is no evidence from the debtor stating which of the schedules was properly filed. Moreover, as the court has noted previously in this ruling, accurate budget

information is part of the debtor's prima facie case for confirmation and must be filed at the outset of the motion.

The reply also states that the motion will be amended to include the legal basis for the motion. Creditors must be notified of the basis for the motion when the motion is filed and served, affording ample time for review and opposition if desired.

The court will deny the motion.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The debtor's motion to modify a chapter 13 plan has been presented to the court. Having considered the motion together with papers filed in support and opposition to it, and having heard the arguments of counsel, if any, and good cause appearing, presented at the hearing,

IT IS ORDERED that the motion is denied. The court denies modification of the chapter 13 plan.

25. [24-20596](#)-A-13 **IN RE: BRANDON/ERMA FLORES**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
4-3-2024 [[16](#)]

SETH HANSON/ATTY. FOR DBT.

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: LBR 3015-1(c)(4), 9014-1(f)(2); no written opposition required

Disposition: Continued to June 4, 2024, at 9:00 a.m.

Order: Civil minute order

The Chapter 13 trustee objects to confirmation of the debtor(s) plan.

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor has the burden of proving that the plan complies with all statutory requirements of confirmation. *In re Andrews*, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*, 32 F.3d 405, 407-08 (9th Cir. 1994).

The court will continue the hearing on this objection to allow the parties to augment the evidentiary record.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

IT IS ORDERED that the hearing on this objection will be continued to June 4, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that the debtor(s) shall do one of the following:

(A) File a Statement of No Opposition. If the debtor(s) agree that the Chapter 13 trustee's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than May 7, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection not later than May 7, 2024; the response shall specifically address each issue raised in the trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than May 21, 2024. The evidentiary record will close after May 21, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the Chapter 13 trustee's objection by filing a modified plan, not later than May 7, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan; and

IT IS FURTHER ORDERED that if the debtor(s) fail to undertake any of the foregoing three options, the Chapter 13 trustee's objection will be sustained on the grounds stated in the objection without further notice or hearing.