

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

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

DAY: TUESDAY
DATE: JANUARY 5, 2021
CALENDAR: 9:00 A.M. CHAPTER 13 CASES

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. 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. [20-24902](#)-A-13 **IN RE: ISIDRO FLORES**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
12-9-2020 [\[28\]](#)

PETER MACALUSO/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: Sustained and confirmation denied

Order: Civil minute order

No responding party is required to file written opposition to the objection; opposition may be presented at the hearing. LBR 3015-1(c)(4), 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

The plan is not feasible under 11 U.S.C. § 1325(a)(6). The proposed plan relies on a Motion to Value Collateral filed against Travis Credit Union, listed in Class 2B, ECF No. 33 (Item 2). The court has not granted said motion to value. Therefore, the trustee calculates the plan does not have sufficient monies to pay the claim in full.

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 chapter 13 trustee's objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is sustained. The court denies confirmation of the chapter 13 plan.

2. [20-24902](#)-A-13 **IN RE: ISIDRO FLORES**
[PGM-2](#)

MOTION TO VALUE COLLATERAL OF TRAVIS CREDIT UNION
12-7-2020 [\[23\]](#)

PETER MACALUSO/ATTY. FOR DBT.
NON-OPPOSITION

Final Ruling

Motion: Value Collateral
Disposition: Denied without prejudice
Order: Civil minute order

SERVICE PROBLEMS

As a contested matter, a motion to value collateral is governed by Federal Rule of Bankruptcy Procedure 9014. Fed. R. Bankr. P. 9014(a). Rule 9014 requires Rule 7004 service of motions in contested matters. Fed. R. Bankr. P. 9014(b). Persons wishing to serve papers by mail on an insured depository institution, with exceptions not applicable, must use "certified mail addressed to an officer of the institution. Fed. R. Bankr. P. 7004(h). See 11 U.S.C. § 101(34) (defining "insured credit union") & (35) (defining "insured depository institution" to include "insured credit union"); Fed. R. Bankr. P. 9001.

Service of the motion was insufficient. Travis Credit Union is an "insured depository institution" within the meaning of Rule 7004(h). Service of the motion was not made by certified mail to an officer of Travis Credit Union. No showing has been made that the exceptions in Rule 7004(h) are applicable. See Fed. R. Bankr. P. 7004(h)(1)-(3).

VIOLATION OF L.B.R. 9014-1(d)(3)

"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." L.B.R. 9014-1(d)(3). Here, the debtor did not state the legal authority for this motion to value collateral as required under L.B.R. 9014-1(d)(3).

3. [20-23104](#)-A-13 **IN RE: JOSE/MARGARITA VALADEZ**
[DPC-2](#)

CONTINUED MOTION TO DISMISS CASE
11-10-2020 [[60](#)]

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

4. [20-23104](#)-A-13 **IN RE: JOSE/MARGARITA VALADEZ**
[PGM-2](#)

MOTION TO CONFIRM PLAN
11-30-2020 [[70](#)]

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final 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.

DISCUSSION

The debtors failed to provide the trustee with required or requested documents. See 11 U.S.C. § 521(a)(3)-(4). The debtors failed to provide proof of license and insurance or written statements that no such documentation exists as to the debtor's business A-M-J Transport LLC.

The plan is not feasible under § 1325(a)(6). Schedule I indicates that the debtor's monthly business income is \$7,000.00. The bank statements that were provided to the trustee do not match the income listed on Schedule I, ECF No. 75. The trustee needs more information regarding the debtor's actual monthly business income. Also, without detailed statements showing gross receipts and ordinary and necessary expenses, the trustee cannot assess feasibility of the plan.

Section 527 of the Bankruptcy Code states that "all assets and all liabilities are required to be completely and accurately disclosed in the documents filed to commence the case," 11 U.S.C. § 527(a)(2)(B). The debtors admitted at the First Meeting of Creditors

that they may have assets not identified on Schedule B. The debtors provided to the trustee four bank statements for four different accounts but only listed two bank accounts on Schedule B, ECF No. 1. The trustee states the debtors failed to accurately list the amounts on each account as of the date of filing.

The debtors' First Amended Plan has Class 1 claims which lists "Lakeview Loan Servicing, LLC" for a debt secured by "Residence", ECF No. 72. The debtors specify that they are two mortgage payments behind. The trustee is unsure what months were missed and what payments should be applied. The proposed plan payments to the creditor will not be disbursed until January 2021, that is an additional payment of \$1,736.16 that the trustee does not know if the debtors will make in December 2020.

For the foregoing reasons, the court will sustain the trustee's objection.

REQUEST FOR CONTINUANCE DENIED

The debtor has presented a request for continuance of this matter, stating that due to the ongoing holidays the debtor was unable to meet with counsel to prepare pleadings and provide the requested documentation. ECF No. 88. The court finds the debtor has failed to demonstrate good cause to continue this hearing. The court will deny the debtor's request to continue this hearing.

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.

5. [20-25104](#)-A-13 **IN RE: MARTIN/LINDA GLASENAPP**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE DAVID P. CUSICK
12-16-2020 [[19](#)]

SCOTT SHUMAKER/ATTY. FOR DBT.

Final Ruling

Matter: Objection to Confirmation of Chapter 13 Plan
Notice: LBR 3015-1(c)(4); no written opposition required
Disposition: Overruled as moot
Order: Civil minute order

Chapter 13 debtors may modify the plan before confirmation. 11 U.S.C. § 1323(a). If the debtor files a modification of the plan under § 1323, the modified plan becomes the plan. 11 U.S.C. § 1323(b). Filing a modified plan renders moot any objection to confirmation of the prior plan. The debtor has filed a modified plan the day this objection to confirmation was filed. The objection will be overruled as moot.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the objection to confirmation is overruled as moot.

6. [20-23410](#)-A-13 **IN RE: JEFFREY MCCLAIN**
[RAS-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-3-2020 [[23](#)]

JULIUS CHERRY/ATTY. FOR DBT.
SEAN FERRY/ATTY. FOR MV.
U.S. BANK, N.A. VS.; NON-OPPOSITION

Final Ruling

Motion: Stay Relief
Notice: LBR 9014-1(f)(1); trustee's non-opposition filed
Disposition: Granted
Order: Civil minute order

Subject Property: 674 Orchid Lane, Lincoln, CA 95648
Aggregate of Liens: \$525,618.62
Value of Subject Property: \$510,000.00

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).

STAY RELIEF

The debtor is obligated to make loan payments to the moving party pursuant to a promissory note secured by a deed of trust on the real property described above. The debtor has defaulted on the loan as 3 postpetition payments totaling \$5,688.39 are past due. Section 362(d)(1) authorizes stay relief for cause shown. 11 U.S.C. § 362(d)(1). Cause exists to grant relief under § 362(d)(1).

Alternatively, because the plan which has not been confirmed provides for the surrender of the subject property that secures the moving party's claim, ECF No. 2, the court concludes that such property is not necessary to the debtor's financial reorganization. And the moving party has shown that there is no equity in the property. Therefore, relief from the automatic stay under § 362(d)(2) is warranted as well.

The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

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.

U.S. Bank National Association's motion for relief from the automatic stay 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 automatic stay is vacated with respect to the property described in the motion, commonly known as 674 Orchid Lane, Lincoln, CA 95648, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

7. [19-24412](#)-A-13 **IN RE: KIT/JUDY WHITE**
[MRL-3](#)

MOTION FOR COMPENSATION FOR MIKALAH RAYMOND LIVIAKIS,
DEBTORS ATTORNEY(S)
11-28-2020 [\[47\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.
NON-OPPOSITION

Tentative Ruling

Application: Allowance of Interim Compensation and Expense
Reimbursement

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Approved

Order: Civil minute order

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 application was required not less than 14 days before the hearing on the application. 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).

COMPENSATION AND EXPENSES

In this Chapter 13 case, Mikalah Raymond Liviakis has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$1,694.00 and reimbursement of expenses in the amount of \$0.00.

The applicant filed Form EDC 3-096, *Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys*, opting in to the no-look fee approved through plan confirmation, ECF No. 3. The plan also shows the attorney opted in pursuant to Local Bankruptcy Rule 2016-1(c), ECF No. 2. The applicant now seeks additional fees, arguing that the no-look fee is insufficient to fairly compensate the applicant. However, in cases in which the fixed, no-look fee has been approved as part of a confirmed plan, an applicant requesting additional compensation must show that substantial and unanticipated post-confirmation work was necessary. See L.B.R. 2016-1(c).

The court finds that the compensation and expenses sought are reasonable, as the debtor's counsel performed substantial and unanticipated work (i.e. Motion to Waive Financial Management Course for Kit White and Notice of Death of Judy E. Kit). The court will approve the application on an interim basis under 11 U.S.C. § 331. Such amounts shall be perfected, and may be adjusted, by a final application for compensation and expenses, which shall be filed prior to case closure.

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.

Mikalah Raymond Liviakis's application for allowance of interim compensation and reimbursement of expenses 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 application,

IT IS ORDERED that the application is approved on an interim basis. The court allows interim compensation in the amount of \$1,694.00 and reimbursement of expenses in the amount of \$0.00. The aggregate allowed amount equals \$1,694.00.

IT IS FURTHER ORDERED that the fees and costs are allowed pursuant to 11 U.S.C. § 331 as interim fees and costs, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure.

IT IS FURTHER ORDERED that the trustee is authorized to pay the fees allowed by this order from the available funds of the plan in a manner consistent with the terms of the confirmed plan.

8. [20-20814](#)-A-13 **IN RE: PATRICK EASTER AND TINA GUEVARA-EASTER**
[GC-4](#)

OBJECTION TO CLAIM OF INTERNAL REVENUE SERVICE, CLAIM NUMBER
11
11-10-2020 [[88](#)]

JULIUS CHERRY/ATTY. FOR DBT.

Final Ruling

Objection: Objection to Claim

Notice: LBR 3007-1(b)(1); written opposition required

Disposition: Overruled as moot

Order: Civil minute order

Once the deadline for filing proofs of claim has passed, the court has discretion to allow a creditor to amend a proof of claim that was originally filed in a timely manner. *In re Grivas*, 123 B.R. 876, 878 (Bankr. S.D. Cal. 1991). The courts in the Ninth Circuit hold that "[a]mendments are freely allowed for curing defects in the original claim, providing greater detail to a previously-filed claim, or pleading a new theory on previously filed facts." *Id.*

(citing *In re Int'l Horizons, Inc.*, 751 F.2d 1213, 1216 (11th Cir. 1985)).

Here, the debtor objects to Claim No. 11-1 filed by the Internal Revenue Service, contesting the debtor's liability under the claim. Claim 11-1 was filed in a timely manner. The debtor states that the unsecured portion of the debt should amount to \$12,199.26 instead of \$58,149.76. Since the debtor filed this objection to claim, the IRS filed an amended claim (Claim No. 11-3) that states the unsecured portion of the claim amounts to \$12,199.26. The court finds Claim No. 11-3 a permissible amendment to the timely filed claim and that there is no longer a basis for the debtor's objection. Therefore, the court will overrule the debtor's objection as moot.

CIVIL MINUTE ORDER

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

The debtors' objection to claim has been presented to the court. Having considered the objection together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the objection is overruled as moot.

9. [20-24814](#)-A-13 **IN RE: AMELIA MADRIGAL**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
12-9-2020 [\[35\]](#)

MARK SHMORGON/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.

Tentative Ruling

Objection: trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

No responding party is required to file written opposition to the objection; opposition may be presented at the hearing. LBR 3015-1(c)(4), 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

The plan cannot be confirmed under § 1325(a)(6). Payments under the proposed plan are delinquent in the amount of \$355.00. Another scheduled payment of \$355.00 will be due before the hearing.

The debtor has failed to provide the trustee with a required tax return (for the most recent tax year ending immediately before the commencement of the case and for which a Federal income tax return was filed) no later than 7 days before the date first set for the first meeting of creditors. 11 U.S.C. § 521(e)(2)(A)-(B). Also, the debtor has not filed tax returns for 2017 - 2019. The CFTB filed Proof of Claim 1-1, including \$602.73 priority, which indicates that 2017-2019 taxes are, "TBD." The IRS filed Proof of Claim 2-1, showing the debtor owes \$12,551.03 priority taxes and \$11,588.37 unsecured taxes. The claim also indicates that 2015 - 2018 are estimated taxes, with an indication that the returns were not filed.

The proposed plan is overextended under § 1322(d). The plan will fund in 80 months as proposed, since the debtor's plan estimates \$0.00 in priority claims and states \$13,153.76 in priority tax claims. The court cannot confirm a plan that extends beyond 60 months.

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 chapter 13 trustee's objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is sustained. The court denies confirmation of the chapter 13 plan.

10. [20-25016](#)-A-13 **IN RE: FREDERICK BRISBY**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
12-16-2020 [\[47\]](#)

JASON VOGELPOHL/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.

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: Sustained and confirmation denied

Order: Civil minute order

No responding party is required to file written opposition to the objection; opposition may be presented at the hearing. LBR 3015-1(c)(4), 9014-1(f)(2)(C). If opposition is presented at the

hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

11 U.S.C. § 1325(a)(6)

The plan cannot be confirmed under § 1325(a)(6). Payments under the proposed plan are delinquent in the amount of \$836.00. Another scheduled payment of \$836.00 will be due before the hearing.

L.B.R. 2016-1(c)

Under L.B.R. 2016-1(c), the maximum fee that may be charged as a "no look fee", (no separate motion for fees required), is \$4,000.00 in nonbusiness cases and \$6,000.00 in business cases. Here the debtor proposes attorney's fees in connection with plan confirmation in the amount of \$8,700.00. The plan also provides that the fee will be in compliance with General Order 35 which is an order in effect in the Northern District of California, ECF No. 2. Since this case is currently pending in the Eastern District of California, a motion must be brought to seek approval of attorney's fees that exceeds the "no look" fee allowed under the Eastern District local rules.

L.B.R. 3015-1(a)

"All chapter 13 debtors, as well as the trustee and holders of unsecured claims, when proposing a plan pursuant to 11 U.S.C. §§ 1321, 1323, and 1329(a), shall utilize Form EDC 3-080, the standard form *Chapter 13 Plan*." L.B.R. 3015-1(a). The debtor failed to utilize the mandatory form plan required pursuant to L.B.R. 3015-1(a) and General Order 18-03, Official Local Form EDC 3-080, the standard form Chapter 13 Plan effective November 9, 2018.

11 U.S.C. § 1322(d)

The proposed plan is overextended under § 1322(d). The plan will fund in 68 months as proposed, since the debtor's plan estimates \$0 priority claims and priority tax claims total \$13,153.76. The court cannot confirm a plan that extends beyond 60 months.

SECTION § 1325(a)(5)(B)(ii) AND IMPROPER CLASSIFICATION OF SECURED CLAIM

Section 1325(a)(5)(B)(ii) read together with § 1322(b)(5) requires that the plan provide for payment in full of the delinquent prepetition arrearage as part of the allowed amount of the secured claim. See *id.* §§ 1325(a)(5)(B)(ii), 1322(b)(5) (permitting the curing of any default and ongoing maintenance payments on long-term debt maturing after the plan's term). The claim of Sun West Mortgage Company, Inc. is misclassified as a Class 4 claim, ECF No. 2. The pre-written language of the form plan defines class 4 claims as secured claims paid directly by debtor or third party and mature after the completion of this plan, are not in default are not modified by this plan. Sun West Mortgage Company, Inc. filed Claim No. 7-1, stating that the debtor is in default \$28,562.33.

Therefore, the creditor's claim should be in Class 1 instead of Class 4.

For the foregoing reasons, the court will sustain the trustee's objection.

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 chapter 13 trustee's objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is sustained. The court denies confirmation of the chapter 13 plan.

11. [20-21720](#)-A-13 **IN RE: EARL MILLER**
[DPC-1](#)

CONTINUED MOTION TO DISMISS CASE
10-27-2020 [\[70\]](#)

TIMOTHY WALSH/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

12. [20-21720](#)-A-13 **IN RE: EARL MILLER**
[TJW-4](#)

MOTION TO CONFIRM PLAN
11-23-2020 [\[79\]](#)

TIMOTHY WALSH/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

13. [20-20923](#)-A-13 **IN RE: SOPAWORN SAVEDRA**
[DPC-2](#)

CONTINUED MOTION TO DISMISS CASE
10-9-2020 [\[80\]](#)

GABRIEL LIBERMAN/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

14. [20-20923](#)-A-13 **IN RE: SOPAWORN SAVEDRA**
[GEL-4](#)

MOTION TO CONFIRM PLAN
11-16-2020 [\[86\]](#)

GABRIEL LIBERMAN/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.

The proposed plan is overextended under 11 U.S.C. § 1322(d). The plan will file in 109 months. The court cannot confirm a plan that funds beyond 60 months.

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.

15. [20-23127](#)-A-13 **IN RE: KEVIN GRIMES AND MICHAEL RULLI**
[DPC-3](#)

CONTINUED MOTION TO DISMISS CASE
10-27-2020 [[33](#)]

LUCAS GARCIA/ATTY. FOR DBT.
DEBTORS DISMISSED: 12/16/20

Final Ruling

The case having been dismissed the matter is dropped as moot.

16. [20-23127](#)-A-13 **IN RE: KEVIN GRIMES AND MICHAEL RULLI**
[LBG-1](#)

MOTION TO CONFIRM PLAN
11-23-2020 [[39](#)]

LUCAS GARCIA/ATTY. FOR DBT.
DEBTORS DISMISSED: 12/16/20

Final Ruling

The case having been dismissed the matter is dropped as moot.

17. [20-22937](#)-A-13 **IN RE: ROBERT LOYA AND JULIE MCLAIN**
[PGM-1](#)

MOTION TO CONFIRM PLAN
11-30-2020 [[62](#)]

PETER MACALUSO/ATTY. FOR DBT.
NON-OPPOSITION

Final Ruling

Motion: Confirm Chapter 13 Plan

Notice: LBR 3015-1(d)(1), 9014-1(f)(1); trustee's non-opposition
filed

Disposition: Granted

Order: Prepared by the movant, approved by the trustee

Subject: First Amended Chapter 13 Plan, November 30, 2020

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).

CHAPTER 13 PLAN 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).

The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

18. [20-23839](#)-A-13 **IN RE: NICOLE PRESTON**
[DPC-2](#)

MOTION TO DISMISS CASE
11-23-2020 [\[35\]](#)

MARK BRIDEN/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Civil minute order

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).

CASE DISMISSAL

Cause exists under § 1307(c)(1), (c)(4) and § 1326(a)(1)(A) to dismiss the case. Payments under the proposed plan are delinquent in the amount of \$1,000.00. Two additional payments of \$1,000.00 will also be due before the hearing.

The debtor has failed to provide the trustee with required or requested documents. See 11 U.S.C. § 521(a)(3)-(4). The debtor failed to submit copies of his payment advices received within the 60-day period pre-petition.

The debtor has failed to provide the trustee with a required tax return (for the most recent tax year ending immediately before the commencement of the case and for which a Federal income tax return was filed) no later than 7 days before the date first set for the first meeting of creditors. 11 U.S.C. § 521(e)(2)(A)-(B).

The debtor has failed to appear at a § 341 meeting of creditors on November 19, 2020. See 11 U.S.C. §§ 341, 343.

For the reasons stated in the motion, cause exists to dismiss the case. *Id.* § 1307(c)(1).

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 entered the default of the respondent debtor 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 for unreasonable delay by the debtor that is prejudicial to creditors. The court hereby dismisses this case.

19. [18-26240](#)-A-13 **IN RE: ROSA FERREIRA**
[TLA-4](#)

MOTION TO MODIFY PLAN
11-16-2020 [\[59\]](#)

THOMAS AMBERG/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Modify Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(1); trustee's non-opposition filed

Disposition: Granted

Order: Prepared by movant, approved by the trustee

Subject: Third Amended Chapter 13 Plan, November 16, 2020

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).

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.

20. [19-21740](#)-A-13 **IN RE: JUDITH HARTWELL**
[RAS-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-3-2020 [\[45\]](#)

JUSTIN KUNEY/ATTY. FOR DBT.
SEAN FERRY/ATTY. FOR MV.
WILMINGTON SAVINGS FUND SOCIETY, FSB VS.; RESPONSIVE PLEADING

Final Ruling

Motion: Stay Relief
Notice: LBR 9014-1(f)(1); trustee's non-opposition filed
Disposition: Granted
Order: Civil minute order

Subject: 4821 Grannan Way, Placerville, California 95667-7814
Aggregate of liens: \$660,887.88
Value: \$575,000.00

STAY RELIEF

The debtor is obligated to make loan payments to the moving party pursuant to a promissory note secured by a deed of trust on the real property described above. The moving party is placed in Class 1 of the plan, ECF No. 2. The movant initially filed a motion for stay relief, stating the movant is not adequately protected due to the debtor defaulting on postpetition payments, ECF No. 31. The court denied the movant's motion for stay relief after the debtor and trustee stipulated to modify the plan so that it provides for the postpetition charges, ECF No. 39. The movant subsequently filed another motion for stay relief due to lack of adequate protection, ECF No. 45. The trustee does not object, reporting that the debtor is still in default on the loan as 2 postpetition payments totaling \$602.01 are past due, Trustee's declaration, ECF No. 52. Section 362(d)(1) authorizes stay relief for cause shown. 11 U.S.C. § 362(d)(1). The movant has provided a prima facie case that cause exists to grant relief under § 362(d)(1).

Alternatively, because the plan which has been confirmed provides for the surrender of the subject property that secures the moving party's claim, the court concludes that such property is not necessary to the debtor's financial reorganization. And the moving party has shown that there is no equity in the property. Therefore, relief from the automatic stay under § 362(d)(2) is warranted as well.

Furthermore, the debtor's opposition to the movant's stay relief motion does not have a supporting declaration, ECF No. 54. L.B.R. 9014-1(d)(3)(D) holds that "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)." The debtor's opposition to the movant's stay relief motion is not accompanied by evidence as required under L.B.R. 9014-1(d)(3)(D).

The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

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.

Wilmington Savings Fund Society's motion for relief from the automatic stay 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 automatic stay is vacated with respect to the property described in the motion, commonly known as 4821 Grannan Way, Placerville, California 95667-7814, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

21. [20-24640](#)-A-13 **IN RE: TROY TATE**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
12-7-2020 [[25](#)]

Tentative Ruling

If the filing fee has not been paid in full by the time of the hearing, the case may be dismissed without further notice or hearing.

22. [20-24947](#)-A-13 **IN RE: DANIEL MCARTHEY**
[ALG-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY HOME POINT FINANCIAL CORPORATION
11-18-2020 [[18](#)]

JULIUS CHERRY/ATTY. FOR DBT.
ARNOLD GRAFF/ATTY. FOR MV.

Tentative Ruling

Objection: Creditor's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

No responding party is required to file written opposition to the objection; opposition may be presented at the hearing. LBR 3015-1(c)(4), 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

SECTION § 1325(a)(5)(b)(ii) AND IMPROPER CLASSIFICATION OF SECURED CLAIM

Home Point Financial Corporation's objection to confirmation is made on grounds that the plan incorrectly classifies its secured claim. The court takes judicial notice of the debtor's chapter 13 plan and its contents, which appear on its docket. Fed. R. Evid. 201(b)(2). The plan places the secured creditor's claim in Class 4, yet the claim is in default and includes a pre-petition arrearage.

Given that this creditor has filed a proof of claim 4-1, its claim is deemed allowed until a party in interest objects. 11 U.S.C. § 502(a). As a result, the claim is delinquent based prepetition arrearage set forth on the filed proof of claim.

Section 1325(a)(5) prescribes the treatment of an allowed secured claim provided for by the plan. This treatment must satisfy one of three alternatives described in paragraph (5) of § 1325(a). In summary, these mandatory alternatives are: (1) the secured claim holder's acceptance of the plan, (2) the plan's providing for both (a) lien retention by the secured claim holder and (b) payment distributions on account of the secured claim having a present value at least equal to the allowed amount of such claim, or (3) the plan's providing for surrender of the collateral to the secured claim holder. See 11 U.S.C. § 1325(a)(5).

In addition, this district's form chapter 13 plan provides that "Class 4 claims mature after the completion of this plan, are not in default, and are not modified by this plan." Form Chapter 13 Plan, EDC 3-080. Claims that are in default and mature after the completion of the plan's term are to be placed in Class 1. Therefore, placing such a claim in Class 4 violates the terms of this district's form plan. Class 4 of the plan indicates payment of only the ongoing post-petition mortgage installments on the Class 4 claim and not the pre-petition arrearage.

Here the creditor has a secured claim of \$ 262,477.41 against the debtors' residence, Claim No. 4-1. The creditor is owed pre-petition arrears in the amount of \$6,474.42. The creditor's claim has been placed in Class 4 of the plan, ECF No. 13. Because the plan fails to provide for cure of the prepetition arrearage, the plan does not provide payment distributions on account of this secured claim that are at least equal to the allowed amount of such claim. Further, the secured claim holder does not accept the plan, and Class 4 is not a mechanism for surrender. The claim must also be placed in Class 1.

For the foregoing reasons, the court will sustain the creditor's objection to confirmation.

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.

Home Point Financial Corporation's objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is sustained. The court denies confirmation of the chapter 13 plan.

23. [20-24947](#)-A-13 **IN RE: DANIEL MCARTHEY**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
12-16-2020 [\[33\]](#)

JULIUS CHERRY/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

No responding party is required to file written opposition to the objection; opposition may be presented at the hearing. LBR 3015-1(c)(4), 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

All creditors and parties in interest have not received the notice required by Federal Rule of Bankruptcy Procedure 2002(b). The debtor bears the burden of proof on all elements of chapter 13 plan confirmation. *In re Hill*, 268 B.R. 548, 552 (B.A.P. 9th Cir. 2001). The debtor filed an Amended Master Address List and added several creditors, ECF No. 17. A review of the case at the First Meeting of Creditors was subsequently conducted on December 10, 2020. The added creditors in the Amended Master Address List were not served with the Notice of the debtor's plan after the meeting concluded. While several of these creditors have filed Proofs of Claims and one has filed its own Objection to Confirmation, the debtor has not satisfied his burden to establish that all creditors are aware of the pending Chapter 13 plan or its confirmation hearing, ECF No. 33. The court will therefore sustain the trustee's objection.

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 chapter 13 trustee's objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is sustained. The court denies confirmation of the chapter 13 plan.

24. [20-24851](#)-A-13 **IN RE: MARGO SWIFT**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
12-10-2020 [\[21\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

No responding party is required to file written opposition to the objection; opposition may be presented at the hearing. LBR 3015-1(c)(4), 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

The proposed plan is not feasible under § 1325(a)(6). The plan calls for a Motion to Value Collateral against creditor Ally Financial, listed in Class 2B. The debtor has not filed a motion to value. If the motion to value is not granted, the plan does not have sufficient monies to pay the claim in full and therefore should be denied confirmation.

The debtor has failed to provide the trustee with required or requested documents. See 11 U.S.C. § 521(a)(3)-(4). The debtor indicated she is married on the Statement of Financial Affairs and Form 122C-1, ECF No. 1. The debtor has failed to file a Spousal Waiver for use of the California State Exemptions under the California Code of Civil Procedure § 703.140, ECF No. 1.

The debtor has failed to provide the trustee with a required federal tax return (for the most recent tax year ending immediately before the commencement of the case and for which a Federal income tax return was filed) no later than 7 days before the date first set for the first meeting of creditors. 11 U.S.C. § 521(e)(2)(A)-(B).

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 chapter 13 trustee's objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is sustained. The court denies confirmation of the chapter 13 plan.

25. [20-24851](#)-A-13 **IN RE: MARGO SWIFT**
[SW-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY ALLY BANK
11-23-2020 [\[15\]](#)

PETER MACALUSO/ATTY. FOR DBT.
ADAM BARASCH/ATTY. FOR MV.

Tentative Ruling

Objection: Creditor's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

No responding party is required to file written opposition to the objection; opposition may be presented at the hearing. LBR 3015-1(c)(4), 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

REDUCTION OF COLLATERAL VALUE WITHOUT A MOTION

L.B.R. 3015-1(i) provides that "[t]he hearing [on a valuation motion] must be concluded before or in conjunction with the confirmation of the plan. If a motion is not filed, or it is unsuccessful, the Court may deny confirmation of the plan."

In this case, the plan proposes to reduce Ally Bank's Class 2 secured claim based on the value of the collateral securing such claim. But the debtor has not yet obtained a favorable order on a motion to determine the value of such collateral. Ally Bank has also objected to the proposed value under the plan, ECF No. 15. Accordingly, the court must deny confirmation of the plan.

TILL V. SCS CREDIT CORP.

The plan's interest rate on a secured claim should be evaluated under the principles established in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). The court in *Till* held that the "prime-plus or formula rate best comports with the purposes of the Bankruptcy Code." *Till*, 541 U.S. at 480.

The *Till* Court found that "[i]t is sufficient for our purposes to note that, under 11 U.S.C. § 1325(a)(6), a court may not approve a plan unless, after considering all creditors' objections and receiving the advice of the trustee, the judge is persuaded that 'the debtor will be able to make all payments under the plan and to comply with the plan.' Together with the cramdown provision, this requirement obligates the court to select a rate high enough to compensate the creditor for its risk but not so high as to doom the plan. If the court determines that the likelihood of default is so high as to necessitate an 'eye-popping' interest rate, the plan probably should not be confirmed." *Id.* (citations omitted).

"The appropriate size of that risk adjustment depends, of course, on such factors as the circumstances of the estate, the nature of the security, and the duration and feasibility of the reorganization plan." *Id.* at 479. Without deciding the issue of the proper scale of the risk adjustment, the plurality opinion noted that other courts have generally approved upward adjustments of 1% to 3% to the interest rate. See *id.* at 480.

Here, the plan provides for an interest rate of 4% on the objecting creditor's class 2 secured claim. The court takes judicial notice of the prime rate of interest as published in a leading newspaper. *Bonds, Rates & Credit Markets: Consumer Money Rates*, Wall St. J., http://online.wsj.com/mdc/public/page/mdc_bonds.html. Fed. R. Bankr. P. 201(b)(2).

The appropriate interest rate should be about 1% to 2% above the current prime rate given the nature of the security, the risk of default, and the lack of evidence submitted by the creditor that would warrant upward adjustment. The prime interest rate is 3.25%. So, the plan's proposed interest rate does not comply with *Till* and § 1325(a)(5)'s present value requirement.

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.

Ally Bank's objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is sustained. The court denies confirmation of the chapter 13 plan.

26. [17-26052](#)-A-13 **IN RE: TANISHA MAVY**
[TM-23](#)

MOTION TO MODIFY PLAN
11-23-2020 [[226](#)]

TANISHA MAVY/ATTY. FOR MV.
RESPONSIVE PLEADING

Final Ruling

Motion: Modification of a Chapter 13 Plan

Disposition: Denied without prejudice

Order: Civil minute order

Federal Rule of Bankruptcy Procedure 3015(h) states, "A request to modify a plan under § 1229 or § 1329 of the Code shall identify the proponent and shall be filed together with the proposed modification. The clerk, or some other person as the court may direct, shall give the debtor, the trustee, and all creditors not less than 21 days' notice by mail of the time fixed for filing objections and, if an objection is filed, the hearing to consider the proposed modification, unless the court orders otherwise with respect to creditors who are not affected by the proposed modification." Also, L.B.R. 3015-1(d)(2) requires that "If the debtor, trustee, or the holder of an allowed unsecured claim modifies the chapter 13 plan after confirmation pursuant to 11 U.S.C. § 1329, the plan proponent shall file and serve the modified chapter 13 plan together with a motion to confirm it." Here, only notice of the motion to modify has been served, ECF No. 230. The debtor failed to serve the motion, the proposed modified plan, or exhibits as required by F.R.B.P. 3015(h) and L.B.R. 3015-1(d)(2).

All creditors and parties in interest have not received the notice required by Federal Rule of Bankruptcy Procedure 3015(h). The certificate of service shows that Educational Credit Management Corp. and Portfolio Recovery Associates, LLC have not received notice.

In addition, the court previously denied the debtor's prior motion to modify due to the certificate of service failing to show service to Synchrony Bank c/o PRA Receivables Management (Norfolk, VA), Educational Credit Management Corp., Greg Padilla Bail Bonds, and PG&E (Stockton, CA), ECF No. 224. The debtor's current mailing list

appears to include Synchrony Bank and PG&E, but not at the addresses provided on the court's mailing matrix. The debtor's mailing list now includes Greg Padilla Bail Bonds at the correct address, but continues to omit Education Credit Management Corp, ECF No. 230.

27. [20-23552](#)-A-13 **IN RE: REGINALD/RAMONA BURTON**
[TAM-1](#)

MOTION TO CONFIRM PLAN
11-20-2020 [[38](#)]

THOMAS MOORE/ATTY. FOR DBT.
DEBTORS DISMISSED: 11/27/20

Final Ruling

The case having been dismissed the matter is dropped as moot.

28. [17-21160](#)-A-13 **IN RE: LUIS/MELISSA CRUZ DE LA CRUZ**
[TJW-1](#)

MOTION TO CONFIRM SALE OF REAL PROPERTY
12-22-2020 [[54](#)]

STEPHEN MURPHY/ATTY. FOR DBT.

No Ruling

29. [18-23478](#)-A-13 **IN RE: TAMMY JACKSON**
[DPC-2](#)

CONTINUED MOTION TO DISMISS CASE
8-25-2020 [[62](#)]

PETER MACALUSO/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.

No Ruling

30. [18-23478](#)-A-13 **IN RE: TAMMY JACKSON**
[PGM-3](#)

MOTION TO MODIFY PLAN
11-30-2020 [[94](#)]

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Modification of a Chapter 13 Plan

Disposition: Denied without prejudice

Order: Civil minute order

All creditors and parties in interest have not received the notice required by Federal Rules of Bankruptcy Procedure 3015(g). The certificate of service shows that XCL Titling Trust, LLC's attorney Timothy Silverman has not received notice.

For matters requiring notice to all creditors and parties in interest, the court prefers that a current copy of the ECF master mailing list, accessible through PACER, be attached to the certificate of service to indicate that notice has been transmitted to all creditors and parties in interest. The copy of the master mailing list should indicate a date near in time to the date of service of the notice.

31. [20-25080](#)-A-13 **IN RE: KARAMDEEP SINGH**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK
12-16-2020 [[35](#)]

PETER MACALUSO/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

No responding party is required to file written opposition to the objection; opposition may be presented at the hearing. LBR 3015-1(c)(4), 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

11 U.S.C. § 1325(a)(3), (7)

The trustee objects to confirmation of the plan, stating that the debtor's plan has not been proposed in good faith, 11 U.S.C. § 1325(a)(3), (7). Good faith depends on the totality of circumstances. *In re Warren*, 89 B.R. 87 (9th Cir. 1988). Factors to be considered in determining good faith include but are not limited to i) The accuracy of the plan's statements of the debts, expenses and percentage of repayment of unsecured debt, and ii) the accuracy of information provided in the Voluntary Petition, Schedules, and Statement of Financial Affairs, *Id.*, citing *In re Brock*, 47 B.R. 167,169 (Bankr. S.D. Cal. 1985).

The debtor bears the burden of proof on all elements of chapter 13 plan confirmation. *In re Hill*, 268 B.R. 548, 552 (B.A.P. 9th Cir. 2001). Here, the debtor did not establish that the plan's statements of the debts and expenses are accurate. There are no creditors listed in Class 1 - 4 of the plan. However, Schedule A identifies that the debtor has a first Deed of Trust in the amount of \$345,000 which is secured by the debtor's residence, ECF No. 1. The debtor did not explain why this debt was not accounted for in the plan.

The debtor did not establish that the information provided in the Voluntary Petition, Schedules, and Statement of Financial Affairs is accurate. Schedule D identifies a debt owed to North Mill Equipment Finance in the amount of \$30,000.00 for a 2015 Freightliner Cascadia Truck, and two debts owed to Transport Funding LLC—one in the amount of \$25,000.00 for a 2015 Freightliner Cascadia, and \$30,000.00 for a 2016 Freightliner Cascadia, ECF No. 1. Based on research, the trustee states the amounts the debtor provided are understated. Also, the debtor admitted at the First Meeting of Creditors that he transferred ownership of the Transport Funding LLC trucks to former employee Jack Brar and the North Mill Equipment Finance truck to former employee Jatinder Jill in October 2019 and received no compensation for either transfer.

The debtor listed a 2020 Tesla in Schedule B for \$1.00 as the current value, ECF No. 1. However, the debtor states there a secured debt on the Tesla in the amount \$47,000.00, ECF No. 1. This debt is not listed on Schedule D or Schedule G. The trustee is unclear if the debtor intends to retain the vehicle or surrender it.

It is unclear to the trustee if the debtor has accurately completed the Schedules to reflect all assets, including all community assets. The debtor admitted at the First Meeting of Creditors that he has been married since 2012. The debtor also admitted that he received \$8,000.00 as unemployment compensation, that \$5,000.00 was given to his spouse and that \$3,000.00 remains in his possession. Schedule B is silent regarding any EDD funds that are owed to the debtor. Schedule H also fails to identify the debtor's non-filing spouse's information, ECF No. 1.

The Statement of Financial Affairs, question #4 does not identify any gross income for tax years 2018 through 2020, ECF No. 1. However, a review of the debtor's 2018 and 2019 tax returns

indicates that the debtor has income over the past two years. Additionally, Question #27 identifies the debtor was involved with 2 businesses within the last 4 years; however, the tax returns suggest that the debtor was connected to a third business, Hurkanx, Inc., which does not appear to have been listed. Furthermore, it appears that Manage Service of Goods, one of the businesses listed in SOFA, is an LLC identified on Schedule B. However, the debtor did not provide an EIN for this business.

The debtor has not adequately explained why the debtor had \$0.00 gross income year in the last two calendar years, ECF No. 1, while possibly operating as many as 3 businesses, and with presumably three Freightliners and a Toyota Land Cruiser as business vehicles. The debtor did not propose to surrender the Freightliners and now faces a motion for stay relief filed by Transport Funding, LLC, ECF No. 24. The debtor has filed schedules stating that the trucks are his vehicles and insured. However, the movant creditor for stay relief stated, "Debtor is not on title to the Trucks, he has failed to insure them, he has given them to third-parties to use, without Movant's consent, and he has failed to make the November 2020, and subsequent post-petition payments," ECF No. 29.

The debtor's income is speculative. The debtor is currently not employed, and it is unclear if the debtor's non-filing spouse is willing to help fund the plan. The debtor admitted at the First Meeting of Creditors that he is currently unemployed and has recently received about \$8,000.00 in unemployment compensation, of which \$5,000.00 was given to the non-filing spouse and he is still in possession of \$3,000.00. There has been no declaration filed by the debtor's non-filing spouse as to whether she will contribute to funding the plan.

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 chapter 13 trustee's objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is sustained. The court denies confirmation of the chapter 13 plan.

32. [20-24890](#)-A-13 **IN RE: BARBARA PATTERSON**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
12-9-2020 [[14](#)]

ARETE KOSTOPOULOS/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

No responding party is required to file written opposition to the objection; opposition may be presented at the hearing. LBR 3015-1(c)(4), 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

11 U.S.C. 1325(b)

The plan does not comply with § 1325(b) because it neither pays unsecured creditors in full nor provides payment to unsecured creditors of all projected disposable income. See 11 U.S.C. § 1325(b). Form 122C-2 shows a disposable income of \$20,499.60 over the next five years. The plan only pays unsecured creditors \$10,154.32.

11 U.S.C. 521(a)

The debtor has failed to provide the trustee with required or requested documents. See 11 U.S.C. § 521(a)(3)-(4). At the Meeting of Creditors, the debtor testified that her residence address listed is incorrect. The trustee requested that the debtor's attorney file a change of address with the court. To date, the debtor has failed to comply.

L.B.R. 2016-1(c)

The maximum fee that may be charged of the debtor's attorney is "\$4,000.00 in nonbusiness cases, and \$6,000.00 in business cases," L.B.R. 2016-1(c). The trustee objects to approval of the debtor's non-business case attorney's fees in the amount of \$4,500.00 in connection with plan confirmation.

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 chapter 13 trustee's objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is sustained. The court denies confirmation of the chapter 13 plan.