

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA**

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

**DAY: WEDNESDAY**  
**DATE: JANUARY 5, 2022**  
**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. [21-23600](#)-A-13     **IN RE: JEREMIAH RICHARDSON**  
[DPC-1](#)

MOTION TO DISMISS CASE  
12-8-2021    [\[32\]](#)

BERT VEGA/ATTY. FOR DBT.  
DEBTOR DISMISSED: 12/8/2021

**Final Ruling**

This case was dismissed December 8, 2021, the matter is dropped as moot.

2. [21-23600](#)-A-13     **IN RE: JEREMIAH RICHARDSON**  
[DPC-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK  
12-8-2021    [\[36\]](#)

BERT VEGA/ATTY. FOR DBT.  
DEBTOR DISMISSED: 12/8/2021

**Final Ruling**

This case was dismissed December 8, 2021, the matter is dropped as moot.

3. [21-23702](#)-A-13     **IN RE: WILLIS/MISKA PEARSON**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE DAVID P. CUSICK  
12-8-2021    [\[18\]](#)

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.

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 chapter 13 trustee objects to confirmation of the debtors' plan contending that the plan fails to pay unsecured creditors all projected disposable income and because the debtors have claimed inappropriate or incorrect amounts as expenses on Form 122C-2. The expenses claimed impact the amount of monthly disposable income.

#### **FORM 122C-2 - DISPOSABLE MONTHLY INCOME**

##### Plan Fails to Pay Disposable Monthly Income to Unsecured Creditors

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). The plan proposes to pay unsecured creditors 20%. Form 122C-2 shows monthly disposable income of \$627.00 over the next five years, ECF No. 9. The trustee calculates that the plan only proposes to pay unsecured creditors \$368.93 per month.

##### Plan Incorrectly Calculates Disposable Monthly Income

The trustee contends that the following expense is included in an incorrect amount in the calculation of disposable monthly income: Involuntary deductions \$2,251.00 where the amount on Schedule I projects \$1,841.00.

Additionally, the trustee objects to debtors' expense of \$560.00 for telephone and internet charges on Form 122C-2. The form specifically provides that amounts for cell phone, interest and home phone are not to be included in this amount. The debtors have claimed the identical monthly amount on Schedule J for home phone, cell phone and internet. Thus, this amount appears erroneous on Form 122C-2 and the included amount results in an incorrect number for monthly disposable income.

##### Expenses Under 11 U.S.C. § 707(b) (2) (A) (ii) (II)

In addition, the debtor's monthly expenses may include, if applicable, the continuation of actual expenses paid by the debtor that are reasonable and necessary for *care and support of an elderly, chronically ill, or disabled household member or member of the debtor's immediate family* (including parents, grandparents, siblings, children, and grandchildren of the debtor, the dependents of the debtor, and the spouse of the debtor in a joint case who is not a dependent) and who is unable to pay for such reasonable and necessary expenses.

...

11 U.S.C. § 707(b) (2) (A) (ii) (II) (emphasis added).

The trustee objects to the debtors' claimed expense of \$350.00 per month for their grandson. The debtors must prove that their grandson is chronically ill or disabled. There is no evidence proffered by the debtors in the schedules or Form 122C-2 to suggest that this is the case.

The court will sustain each of the trustee's objections 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.

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.

4. [20-21505](#)-A-13     **IN RE: STEPHEN COHRS**  
[DPC-2](#)

MOTION TO DISMISS CASE  
12-6-2021    [\[65\]](#)

TIMOTHY WALSH/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**

The trustee moves to dismiss this chapter 13 case. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. The debtor has failed to confirm a plan within a reasonable time. The case was filed on March 13, 2020, and has been pending for approximately 21 months, yet a plan has not been confirmed. This constitutes unreasonable delay by the debtor that is prejudicial to creditors. The court will dismiss the case.

## **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 this chapter 13 case has been presented to the court. Having entered the default of 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. The court hereby dismisses this case.

5. [21-22911](#)-A-13     **IN RE: CURTIS KNAPPENBERGER**  
[MRL-2](#)

MOTION TO CONFIRM PLAN  
11-19-2021    [\[39\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.

## **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).

The debtor seeks confirmation of his chapter 13 plan. The trustee opposes confirmation also noting that the case is related to a chapter 13 case filed by the debtor's spouse, Faith Knappenberger, Case No. 21-22885. The trustee also opposes confirmation of the plan in the related case.

#### **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).

#### Failure to Provide Income Information

The trustee contends that the debtor has failed to provide the trustee with required income tax returns for the 2019 and 2020 tax years. The debtor and his spouse filed separate income tax returns for these years and the trustee has not received all copies of the returns for these two tax years. The tax returns are essential to the trustee's review of the proposed plan prior to the meeting of creditors.

The failure to provide tax returns makes it impossible for the chapter 13 trustee to accurately assess the debtor's ability to perform the proposed plan. As such, the trustee cannot represent that the plan, in his estimation is feasible, under 11 U.S.C. § 1325(a)(6).

The court notes that the failure to timely provide the tax returns is also a basis for the dismissal of the case as the debtor is required to provide the trustee with a 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 also failed to provide pay advices for his spouse covering the 60 days period prior to the filing of the petition and has failed to provide his pay advices for the month of July 2021.

#### Failure to Provide Bank Statement

The debtor has failed to provide the trustee with a copy of the requested July 2021 statement for the account at SAFE Credit Union, 11 U.S.C. § 521(a)(3).

#### Inaccurate/Incomplete Schedules

The trustee contends that the following schedules are either incomplete or inaccurate: Schedule H as it does not indicate the debtor's spouse as a co-debtor; Statement of Financial Affairs which fails to reflect business income or income from the sale of real property; or Form 122C-2 which contains discrepancies regarding the debtor's income and that of his spouse, as well as appropriate tax withholding.

Because the information in the schedules and statements is incomplete and/or inaccurate the trustee cannot properly evaluate the plan's suitability for confirmation. This is particularly concerning as the plan must be administered consistently with that of the plan proposed by debtor's spouse.

### **GOOD FAITH**

#### Failure to File Accurate and Complete Schedules

To determine bad faith a bankruptcy judge must review the "totality of the circumstances." *In re Goeb*, 675 F.2d 1386, 1391 (9th Cir.1982). "A bankruptcy court must inquire whether the debtor has misrepresented facts in his plan, unfairly manipulated the Bankruptcy Code, or otherwise proposed his Chapter 13 plan in an inequitable manner." *Id.*, at 1390.

The debtor is required to propose a plan in good faith under 11 U.S.C. § 1325(a)(3). Filing inaccurate schedules and statements and failing to promptly amend documents does not evidence that the plan is proposed in good faith. The court notes that as of December 29, 2021, neither the schedules indicated, nor the Statement of Financial Affairs have been amended.

The motion to confirm will be denied.

### **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.

6. [17-26116](#)-A-13     **IN RE: AARON/PHELICIA MCGEE**  
[MWB-4](#)

CONTINUED MOTION FOR COMPENSATION FOR MARK W. BRIDEN,  
DEBTORS ATTORNEY(S)  
11-2-2021     [\[71\]](#)

MARK BRIDEN/ATTY. FOR DBT.

### **Final Ruling**

**Application:** Allowance of Additional Compensation

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

**Disposition:** Denied

**Order:** Civil minute order

### **COMPENSATION AND EXPENSES**

In this chapter 13 case, Mark Briden, attorney for the debtors, requests that the court allow additional compensation in the amount of \$2,250.00 and reimbursement of expenses in the amount of \$10.80.

The motion was continued from December 1, 2021, to allow for additional information to be filed in support of the motion. The debtors filed a declaration in support of payment of the additional compensation.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a trustee, examiner or professional person employed under § 327 or § 1103 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

### **SUBSTANTIAL AND UNANTICIPATED POST-CONFIRMATION WORK**

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. The plan also shows the attorney opted in pursuant to Local Bankruptcy Rule 2016-1(c). 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 LBR 2016-1(c).

Services of Benefit to the Debtor

In a chapter 12 or chapter 13 case in which the debtor is an individual, the court may allow reasonable compensation to the debtor's attorney for representing the interests of the debtor in connection with the bankruptcy case based on a consideration of the benefit and necessity of such services to the debtor and the other factors set forth in this section.

11 U.S.C. § 330(a)(4)(B).

Counsel filed two motions on behalf of the debtors; a motion to modify the plan and a motion to approve purchase of a vehicle. Both motions were necessary, however, each motion was denied. The motion to modify plan was opposed by the chapter 13 trustee and a creditor. A further modified plan is required. The motion to purchase vehicle was continued to allow for production of further evidence requested by the chapter 13 trustee. The evidence was not proffered, and the motion was denied.

As both motions were denied, the court finds that the fees requested are not reasonable as they did not provide a benefit to the debtors. The motion for additional compensation will be denied.

**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.

Mark Briden's application for allowance of additional compensation under LBR 2016-1(c) has been presented to the court.

IT IS ORDERED that the application is denied without prejudice.

7. [19-23616](#)-A-13     **IN RE: MARK BRASHLEY**  
[DPC-1](#)

CONTINUED MOTION TO DISMISS CASE  
9-15-2021    [\[89\]](#)

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

**Final Ruling**

**Motion:** Dismiss Case

**Notice:** Continued from November 16, 2021

**Disposition:** Denied

**Order:** Civil minute order

The hearing on this motion was continued from November 16, 2021, to allow for hearing on the debtor's motion to modify the chapter 13 plan. The motion to modify, WW-7, has been granted.

**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.

8. [19-23616](#)-A-13     **IN RE: MARK BRASHLEY**  
[WW-7](#)

CONTINUED MOTION TO MODIFY PLAN  
10-5-2021     [\[95\]](#)

MARK WOLFF/ATTY. FOR DBT.

### **Final Ruling**

**Motion:** Modify Chapter 13 Plan

**Notice:** Continued from November 16, 2021

**Disposition:** Granted

**Order:** Prepared by movant, approved by the trustee

**Subject:** Second Modified Chapter 13 Plan, filed October 5, 2021

### **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).

This matter was continued from November 16, 2021, to allow the debtor to serve the declaration in support of the motion on all interested parties. The debtor has served the declaration, ECF No. 110 and there is no opposition to the motion. The trustee has indicated his lack of opposition to the plan, ECF No. 111.

### **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.

9. [20-25016](#)-A-13     **IN RE: FREDERICK BRISBY**  
[DPC-3](#)

MOTION TO DISMISS CASE  
12-6-2021    [\[141\]](#)

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

### **Final Ruling**

**Motion:** Dismiss

**Notice:** LBR 9014-1(f)(1)

**Disposition:** Continued to February 1, 2022, at 9:00 a.m.

**Order:** Civil minute order

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) as the debtor has failed to move to confirm the chapter 13 plan filed October 20, 2021.

The debtor has filed an opposition, ECF No. 145. The debtor states he has filed and set a motion to confirm the plan. The confirmation hearing is February 1, 2022, at 9:00 a.m. The court will continue the hearing on this motion to dismiss to coincide with the hearing on the plan confirmation. If the motion to confirm plan is disapproved, and the motion to dismiss has not been withdrawn or otherwise resolved, the court may dismiss the case at the continued 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.

IT IS ORDERED that the chapter 13 trustee's motion to dismiss is continued to February 1, 2022, at 9:00 a.m.

IT IS FURTHER ORDERED that if the trustee elects not to oppose the debtor's motion to modify plan, then the court may dismiss this motion to dismiss as moot, without further hearing.

IT IS FURTHER ORDERED that if the trustee elects to oppose the debtor's motion to modify, then not later than 14 days prior to the continued hearing date the trustee shall file a status report updating this motion to dismiss. The status report shall provide a concise list explaining the remaining issues in the motion to dismiss and indicate the amount of any plan delinquency. The status report shall be succinct and shall not consist of a cut and paste of the opposition filed by the trustee in response to a motion to amend or modify the debtor's plan.

10. [21-23918](#)-A-13     **IN RE: CATHERINE TEEL**  
[ETW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
11-22-2021    [[11](#)]

EDWARD WEBER/ATTY. FOR MV.  
JOHN GRUE VS.  
DEBTOR DISMISSED: 11/29/2021

### **Final Ruling**

This case was dismissed November 29, 2021, the matter is dropped as moot.

11. [21-23819](#)-A-13     **IN RE: GEORGIA/MILTON MERCER**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK  
12-20-2021    [[43](#)]

STEELE LANPHIER/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.

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 chapter 13 trustee objects to the confirmation of the debtors' plan as follows.

### **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).

#### Failure to Provide Income Information

The debtor has failed to provide the trustee with required income tax returns and pay advices under 11 U.S.C. § 521(e)(2)(A). The tax returns and pay advices are essential to the trustee's review of the proposed plan prior to the meeting of creditors.

The failure to provide tax returns and pay advices makes it impossible for the chapter 13 trustee to accurately assess the debtor's ability to perform the proposed plan. As such, the trustee cannot represent that the plan, in his estimation is feasible, under 11 U.S.C. § 1325(a)(6).

The court notes that the failure to timely provide the tax returns is also a basis for the dismissal of the case as the debtor is required to provide the trustee with a 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).

#### **MEETING OF CREDITORS**

The debtor shall appear and submit to examination under oath at the meeting of creditors under section 341(a) of this title. Creditors, any indenture trustee, any trustee or examiner in the case, or the United States trustee may examine the debtor. The United States trustee may administer the oath required under this section.

11 U.S.C. § 343.

All debtors are required to attend the meeting of creditors. The debtor did not attend the scheduled meeting. Thus, the trustee was unable to examine the debtor regarding the issues raised in this motion. The court will sustain the objection

## **FAILURE TO AVOID LIENS/VALUE COLLATERAL ON CLASS 2 CLAIMS**

LBR 3015-1(i) provides that the hearing on a lien avoidance motion or a motion to value collateral "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 avoid the liens or value the collateral of the following Class 2 secured claims: Portfolio Recovery Associates; and Specialized Loan Servicing LLC aka Bank of Mellon New York. But the debtors have not yet obtained a favorable order on a motion to avoid the lien or motion to value collateral of these creditors. Accordingly, the court must deny confirmation of 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.

12. [21-23720](#)-A-13     **IN RE: JOSEPH MORENO**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK  
12-6-2021    [[16](#)]

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 February 1, 2022, at 9:00 a.m.

**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.

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 chapter 13 trustee objects to confirmation stating that the debtor failed to produce evidence of his social security number at the meeting of creditors. This is the sole basis for the trustee's objection.

#### **RULE 4002(b)(1)(B)**

Fed. R. Bankr. P. 4002(b)(1)(B) provides that at the meeting of creditors the debtor shall provide "evidence of social-security number(s), or a written statement that such documentation does not exist."

The chapter 13 trustee conducted the meeting of creditors on December 2, 2021. The debtor failed to provide evidence of his social security number as required by Rule 4002. In failing to provide the necessary document the trustee contends that the debtor has failed to cooperate with the trustee in the performance of his duties as required under 11 U.S.C. §521(a)(3).

The trustee has continued the meeting of creditors to January 6, 2022, at 1:00 p.m. and requests that the hearing on his objection to confirmation be continued.

#### **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 hearing on the trustee's objection is continued to February 1, 2022, at 9:00 a.m.

IT IS FURTHER ORDERED that not later than January 19, 2022, the trustee shall file a status report updating this objection to confirmation. If the required documentation is not provided at the continued meeting of creditors, then the court may sustain the trustee's objection without further hearing.



13. [21-21923](#)-A-13     **IN RE: JORGE BARRAGAN**  
[DPC-2](#)

MOTION TO DISMISS CASE  
12-6-2021    [\[37\]](#)

JULIUS CHERRY/ATTY. FOR DBT.  
DAVID CUSICK/ATTY. FOR MV.

### **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**

The chapter 13 trustee moves to dismiss this chapter 13 case for a delinquency in payments under the debtor's proposed chapter 13 plan. For the reasons stated in the motion, 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 \$7,650.00.

The trustee also moves to dismiss as the debtor has failed to confirm a plan. This case was filed on May 26, 2021, and the debtor has failed to make any payments and has failed to confirm a plan. This constitutes unreasonable delay under 11 U.S.C. § 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 this chapter 13 case has been presented to the court. Having entered the default of 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 because of the delinquency under the proposed chapter 13 plan, and the debtor's failure to confirm a plan in this case. The court hereby dismisses this case.

14. [21-23326](#)-A-13     **IN RE: ROBERT MACLAY**  
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.  
CUSICK  
10-27-2021    [\[21\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### **Final Ruling**

**Objection:** Trustee's Objection to Confirmation of Plan

**Notice:** Continued from November 116, 2021

**Disposition:** Overruled and plan confirmed

**Order:** Civil minute order

**Subject:** Chapter 13 Plan, filed September 22, 2021

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 hearing on the chapter 13 trustee's objection to confirmation was continued to allow the debtor to augment the evidentiary record. The trustee and creditor LoanDepot.com objected to the feasibility of the debtor's plan. The debtor filed a reply, ECF No. 29, to the objection filed by objecting creditor LoanDepot.com, LLC and has offered to increase the plan payment as follows: \$1,080.00 per month for 6 months; \$1,297.00 per month for 54 months. The debtor offered to increase the monthly payments to LoanDepot.com as follows: \$800.00 per month for 12 months; \$1,050.00 per month for 48 months. The debtor filed supplemental Schedules I and J, ECF No. 32 evidencing his ability to make the increased payments.

The trustee has filed a status report, ECF No. 40. The trustee states that he has reviewed the schedules and no longer objects to confirmation of the debtor's plan. Accordingly, the court will overrule the trustee's objection and confirm the plan with the additional plan payment provisions proposed by the debtor.

### **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 overruled. The court confirms the chapter 13 plan. The order confirming the plan shall include the additional payment provisions contained in the debtor's reply, ECF No. 29.

15. [21-23326](#)-A-13     **IN RE: ROBERT MACLAY**  
[ELP-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY  
LOANDEPOT.COM, LLC  
10-13-2021    [\[17\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.  
ERICA LOFTIS/ATTY. FOR MV.

### **Final Ruling**

**Objection:** Loan Depot.com, LLC's Objection to Confirmation of Plan

**Notice:** Continued from November 16, 2021

**Disposition:** Overruled and plan confirmed

**Order:** Civil minute order

**Subject:** Chapter 13 Plan, filed September 22, 2021

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 hearing on the creditor's objection to confirmation was continued to allow the debtor to augment the evidentiary record. The creditor objected to the feasibility of the debtor's plan. The debtor filed a reply, ECF No. 29 and has offered to increase the plan payment as follows: \$1,080.00 per month for 6 months; \$1,297.00 per month for 54 months. The debtor offered to increase the monthly payments to LoanDepot.com as follows: \$800.00 per month for 12 months; \$1,050.00 per month for 48 months. The debtor has filed supplemental Schedules I and J, ECF No. 32. The supplemental schedules show the debtor has the ability to fund the plan at the higher payment amount. Further opposition from the objecting creditor was due not later than December 20, 2021. No further opposition has been filed. Accordingly, the court will overrule the objection and confirm the plan with the additional plan provisions proposed by the debtor.

### **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.

Loan Depot.com, LLC'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 overruled. The court confirms the chapter 13 plan. The order confirming the plan shall include the additional payment provisions contained in the debtor's reply, ECF No. 29.

16. [17-28335](#)-A-13     **IN RE: LISA KOPPLE**  
[PSB-9](#)

CONTINUED MOTION TO MODIFY PLAN  
9-28-2021    [[161](#)]

PAULDEEP BAINS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

#### **Final Ruling**

**Motion:** Modify Chapter 13 Plan

**Notice:** Continued from November 16, 2021

**Disposition:** Granted

**Order:** Prepared by movant, approved by the trustee

**Subject:** Third Modified Chapter 13 Plan, filed September 28, 2021

#### **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 hearing on this motion was continued from November 16, 2021, to allow the debtor to augment the record by filing supplemental declarations detailing the willingness and ability of third parties

to make monthly contributions to the plan. The declarations have been filed. The chapter 13 trustee filed a status report on December 6, 2021, has reviewed the declarations and no longer objects to the motion to modify the plan, ECF No. 180.

The Court notes that all remaining issues are otherwise resolved and the order granting the motion to modify shall provide for interest to secured creditor Debbie Lasley at the rate of 7.25%.

The court finds that the debtor has sustained this burden of proof. The court will grant the motion and approve the modification with the adjustment to the interest rate paid to secured creditor.

17. [21-22835](#)-A-13     **IN RE: AMANDA MESA**  
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
12-2-2021    [\[18\]](#)

MOHAMMAD MOKARRAM/ATTY. FOR DBT.  
AUSTIN NAGEL/ATTY. FOR MV.  
TOYOTA MOTOR CREDIT CORPORATION VS.  
RESPONSIVE PLEADING

### **Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Denied as moot

**Order:** Civil minute order

**Chapter 13 Plan Confirmed:** September 20, 2021

Federal courts have no authority to decide moot questions. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67-68, 72 (1997). "Mootness has been described as the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." *Id.* at 68 n.22 (quoting *U.S. Parole Comm'n v. Geraghty*, 445 U.S. 388, 397 (1980)) (internal quotation marks omitted).

The confirmed chapter 13 plan in this case provides for the movant's claim in Class 4. Class 4 secured claims are long-term claims that mature after the completion of the plan's term. They are not modified by the plan, and they are not in default as of the filing of the petition. They are paid directly by the debtor or a third party. Section 3.11(a) of the plan provides: Upon confirmation of the plan, the automatic stay of 11 U.S.C. § 362(a) and the co-debtor stay of 11 U.S.C. § 1301(a) are . . . modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract . . . ."

Because the plan has been confirmed, the automatic stay has already been modified to allow the moving party to exercise its rights against its collateral. No effective relief can be awarded. The movant's personal interest in obtaining relief from the stay no longer exists because the stay no longer affects its collateral. The motion will be denied as moot.

#### **CIVIL MINUTE ORDER**

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

Toyota Motor Credit Corporation's Motion for Relief From Stay has been presented to the court. Having considered the motion together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the motion is denied at moot.

18. [21-23136](#)-A-13     **IN RE: SONYA ALCARAZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
12-6-2021    [[56](#)]

PETER MACALUSO/ATTY. FOR DBT.  
12/13/21 FINAL INSTALLMENT FEE PAID \$77

#### **Final Ruling**

The installments having been paid in full, the order to show cause is discharged. The case will remain pending.

19. [21-22138](#)-A-13     **IN RE: VICTOR GARCIA MONJARAZ AND RUTH  
BERROTERAN GARCIA**  
[CRG-2](#)

OBJECTION TO CLAIM OF LVNV FUNDING, LLC, CLAIM NUMBER 7  
11-8-2021    [\[41\]](#)

CARL GUSTAFSON/ATTY. FOR DBT.  
TRUSTEE NON-OPPOSITION

### **Final Ruling**

**Objection:** Objection to Claim

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

**Disposition:** Sustained

**Order:** Prepared by objecting party

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this objection. 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 debtors have filed an objection to the claim of LVNV Funding, LLC, Claim No. 7, in any amount. The basis of the objection is that the statute of limitations for collection on the claim has expired. The attachment to the proof of claim shows that the last payment date was December 5, 2002, more than four years prior to the filing of the bankruptcy case on June 8, 2021.

### **CLAIM DISALLOWANCE - STATUTE OF LIMITATIONS**

One basis for disallowing a claim filed by a creditor is that "such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured." 11 U.S.C. § 502(b)(1). If a claim cannot be enforced under state law, then the claim cannot be allowed after objection under § 502(b)(1). *In re GI Indus., Inc.*, 204 F.3d 1276, 1281 (9th Cir. 2000).

A statute of limitation under state law is an affirmative defense that is a proper basis for objection to a proof of claim. *Claudio v. LVNV Funding, LLC*, 463 B.R. 190, 195 (Bankr. D. Mass. 2012). Although a creditor may file a proof of claim under § 501(a) based on a stale claim, the claim will not be allowed under § 502(b) when an objection to claim raises an applicable statute of limitations as an affirmative defense. *See In re Andrews*, 394 B.R. 384, 388 (Bankr. E.D.N.C. 2008) (citing *In re Varona*, 388 B.R. 705 (Bankr. E.D. Va. 2008)).

In a different context, the Supreme Court has held that enforceability is not a prerequisite for having a claim in

bankruptcy. "The word 'enforceable' does not appear in the Code's definition of 'claim.' *Midland Funding, LLC v. Johnson*, 137 S. Ct. 1407, 1412 (2017) (holding that filing a stale claim in bankruptcy does not violate the FDCPA). "[T]he running of a limitations period constitutes an affirmative defense, a defense that the debtor is to assert after a creditor makes a "claim." The law has long treated unenforceability of a claim (due to the expiration of the limitations period) as an affirmative defense." *Id.* (citations omitted).

The applicable statutes of limitations in California bar an action (1) on a contract, obligation or liability founded on an instrument in writing after four years, see Cal. Civ. Proc. Code §§ 312, 337(1), or (2) on an oral contract after two years, see Cal. Civ. Proc. Code § 339.

The claimant has filed a proof of claim based on a credit account that is stale. The objection's well-pleaded facts show that the debtor has made no payments or other transactions on this credit account within the four years prior to the petition date. Under either the statute of limitations for an oral contract or the statute of limitations for a written contract, the claimant's claim based on this loan account is time barred and unenforceable under state law. The objection will be sustained. The claim will be disallowed.

20. [21-23641](#)-A-13      **IN RE: JOHN CYPRESS**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE DAVID P. CUSICK  
12-8-2021    [\[12\]](#)

MARK SHMORGON/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 February 1, 2022, at 9:00 a.m.

**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).

The chapter 13 trustee objects to confirmation as the debtor failed to attend the meeting of creditors on December 2, 2021. The meeting has been continued to January 6, 2022.



## **MEETING OF CREDITORS**

The debtor shall appear and submit to examination under oath at the meeting of creditors under section 341(a) of this title. Creditors, any indenture trustee, any trustee or examiner in the case, or the United States trustee may examine the debtor. The United States trustee may administer the oath required under this section.

11 U.S.C. § 343.

All debtors are required to attend the meeting of creditors. The debtor did not attend the scheduled meeting. Thus, the trustee was unable to examine the debtor regarding the issues raised in this motion.

## **SERVICE**

"Effective service of process, made in compliance with Rule 7004 and Civil Rule 4, is a prerequisite to the bankruptcy court exercising personal jurisdiction over a litigant." *In re 701 Mariposa Project, LLC*, 514 B.R. 10, 16 (B.A.P. 9th Cir. 2014) (citing cases).

It is unclear if the objection has been properly served on the debtor. See Fed. R. Bankr. P. 9014 and 7004. The petition lists the debtor's zip code as "95841" as does the proof of service for the objection filed by the trustee, ECF No. 15. However, the court docket indicates the zip code is "95842" which is the zip code entered by the individual filing the petition on behalf of the debtor at the inception of the case. As these two zip codes conflict one must be erroneous, and the court cannot determine which is correct.

The hearing on the objection will be continued until February 1, 2022, at 9:00 a.m. The debtor shall promptly correct his address on the court's docket and amend/file all necessary pleadings to correct his address.

## **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,

IT IS ORDERED that the hearing on the objection is continued to February 1, 2022, at 9:00 a.m.

IT IS FURTHER ORDERED that not later than January 11, 2022, the debtor shall file all necessary documents to correct his address on

the court's docket, including the amendment of the petition, if appropriate.

IT IS FURTHER ORDERED that not later than January 18, 2022, the trustee shall file and serve a status report updating his objection to confirmation on all interested parties.

IT IS FURTHER ORDERED that not later than January 18, 2022, the trustee shall serve his objection to confirmation on the debtor at the corrected address.

21. [21-23841](#)-A-13      **IN RE: DENNIS FRAZIER**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
12-13-2021    [\[20\]](#)

PETER MACALUSO/ATTY. FOR DBT.

**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. [21-23841](#)-A-13      **IN RE: DENNIS FRAZIER**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK  
12-16-2021    [\[22\]](#)

PETER MACALUSO/ATTY. FOR DBT.

**Tentative Ruling**

**Motion:** Objection to Confirmation of Chapter 13 Plan

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

**Disposition:** Sustained in part; overruled in part - 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 chapter 13 trustee objects to confirmation of the debtor's plan. See 11 U.S.C. §§ 1322, 1323, 1325; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(1)-(2).

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).

#### Class One Creditor Freedom Mortgage Corporation

The trustee contends that the plan improperly provides for ongoing mortgage payments to creditor Freedom Mortgage Corporation. However, the plan calls for monthly payments to this creditor in the amount of \$1,435.83. Given the plan payment of \$1,750.00 per month and the lack of additional proposed ongoing Class 1 payments, this payment appears to be feasible. The court overrules this objection.

The trustee contends that the plan is not feasible as it proposes to pay the arrears owed to Class 1 creditor Freedom Mortgage by obtaining a loan modification. The additional provisions further provide that if the debtor is unable to obtain a loan modification, then the debtor will pay annual sums into the plan sufficient to pay Freedom Mortgage its arrears claim. This provision is not possible for the trustee to administer as it provides no deadline for the debtor to obtain the loan modification. Moreover, the trustee correctly points out that the debtor has not proven an income source sufficient to fund the annual lump sum payments proposed under the plan. The court sustains this objection.

#### Secured Creditor First Trust

The plan does not properly provide for secured creditor First Trust, who holds a deed of trust secured by the debtor's residence. See

Claim No. 2. The claim amount is \$130,220.47 and lists the amount of \$75,000.00 as secured by the debtor's residence which is in default as of the petition date. The plan does not provide for this claim and the creditor has also objected to this treatment, KSR-1. The debtor has not objected to the claim. Thus, this treatment contravenes 11 U.S.C. § 1322(b)(2). The court sustains this objection.

#### **LIQUIDATION**

The trustee objects to confirmation as the proposed plan will pay 0% to unsecured creditors and the debtor owns a boat with a value between \$10,000.00 and \$12,000.00 which has not been scheduled or claimed as exempt. This violates 11 U.S.C. § 1325(a)(4). The court notes that the debtor has not yet amended his schedules to include the boat. Thus, the court finds that the plan is also not proposed in good faith, 11 U.S.C. § 1325(a)(3).

#### **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 objection to confirmation of the debtor's Chapter 13 plan has been presented to the court. Having considered the objection 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 objection is sustained in part and overruled in part. The court denies confirmation of the chapter 13 plan.

23. [21-23841](#)-A-13     **IN RE: DENNIS FRAZIER**  
[KSR-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY FIRST TRUST  
12-3-2021    [\[15\]](#)

PETER MACALUSO/ATTY. FOR DBT.  
KIRK RIMMER/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.

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).

Creditor First Trust objects to confirmation of the debtor's plan contending that the plan fails to provide for the creditor's claim as a secured creditor; and the plan is not feasible as the secured obligation due at the time the petition was filed is \$75,000.00.

**11 U.S.C. § 1322(b)**

Subject to subsections (a) and (c) of this section,  
the plan may--

...

(2) modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims;

\*\*\*

**11 U.S.C. § 1322(b).**

First Trust holds a recorded deed of trust in the debtor's residence. The debtor has failed to classify First Trust's claim as a secured creditor. First Trust has filed a proof of claim, Claim No. 2. The claim provides for a total amount owed of \$130,220.47. The secured portion is \$75,000.00 and unsecured portion is \$55,220.47. The claim states that \$75,000.00 was in arrears when the petition was filed. The debtor has not objected to the claim.

Conversely, the debtor has listed the First Trust obligation in his Schedules as an unsecured creditor, ECF No. 1, Schedule E/F, page 2. The debtor indicates the obligation to First Trust is unliquidated and disputed.

Until the debtor successfully objects to the claim of First Trust the claim is allowed.

Section 502(a) provides that "[a] claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest . . . objects." 11 U.S.C. § 502(a).

As the debtor has failed to provide for the cure of the delinquency of First Trust's claim which is secured by the debtor's residence the plan contravenes 11 U.S.C. § 1322(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 objecting creditor'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. [21-22942](#)-A-13     **IN RE: DARRION BRATTON**  
[DPC-3](#)

MOTION TO DISMISS CASE  
12-6-2021    [\[35\]](#)

TIMOTHY WALSH/ATTY. FOR DBT.

#### **Tentative Ruling**

**Motion:** Dismiss Case

**Notice:** LBR 9014-1(f)(1); written opposition filed by the debtor

**Disposition:** Granted

**Order:** Civil minute order

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) as the debtor has failed to make all payments due under the plan, and because the debtor has failed to propose an amended plan after an objection to confirmation was sustained on November 2, 2021. The trustee contends that the debtor is delinquent in the amount of \$1,407.00.

The debtor's opposition states that the debtor has "made limited payments" and "has experienced more financial hardship, than when he first filed this case." See Declaration of Darion Bratten, ECF No. 41, 1:21-22. The debtor has failed to state how much he has paid or when he intends to file an amended plan.

As the debtor has failed to file an amended plan the court concludes that this constitutes unreasonable delay and cause for dismissal under 11 U.S.C. § 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 considered the motion, the opposition, responses, and oral argument at the hearing, if any, and good cause appearing,

IT IS ORDERED that the motion is granted. The debtor has failed to properly prosecute his chapter 13 case and has not filed an amended plan. This constitutes unreasonable delay under 11 U.S.C. § 1307(c)(1). The court hereby dismisses this case.

25. [21-23146](#)-A-13      **IN RE: STEVE BAKER**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
12-6-2021    [\[24\]](#)

GEORGE BURKE/ATTY. FOR DBT.  
12/9/21 INSTALLMENT FEE PAID \$78

### **Final Ruling**

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

26. [21-23647](#)-A-13      **IN RE: ROBERT KOEHLER**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK  
12-16-2021    [\[18\]](#)

ERIC SCHWAB/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.

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 chapter 13 trustee objects to confirmation of the debtor's plan. Creditors Drew Prinz and Elizabeth Prinz have filed a response to the trustee's objection, and have joined the objection, ECF No. 29.

The court notes that the same creditors have filed a motion to convert this case to Chapter 7, DNL-1, currently scheduled for hearing on January 19, 2022, at 9:00 a.m. The matters raised in the motion to convert will not be addressed in the ruling on this objection to confirmation by the trustee, as the debtor has not had an opportunity to file opposition to the motion to convert.

#### **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).

#### **Failure to Provide Income Information**

The debtor has failed to provide the trustee with required income tax returns under 11 U.S.C. § 521(e)(2)(A). The tax returns are essential to the trustee's review of the proposed plan prior to the meeting of creditors.

The failure to provide tax returns makes it impossible for the chapter 13 trustee to accurately assess the debtor's ability to perform the proposed plan. As such, the trustee cannot represent



that the plan, in his estimation is feasible, under 11 U.S.C. § 1325(a) (6) .

The court notes that the failure to timely provide the tax returns is also a basis for the dismissal of the case as the debtor is required to provide the trustee with a 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 court will sustain this objection.

#### Failure to Provide Business and Financial Documents

The debtor has failed to provide the trustee with required or requested documents. See 11 U.S.C. § 521(a) (3)-(4) .

The trustee requested that the debtor provide him with documents which are required under § 521 of the Bankruptcy Code and with additional documents which the trustee required to properly prepare for the 341 meeting of creditors. The debtor failed to produce the following documents: Profit and Loss Statements for the 6-month period prior to the filing of the petition; bank statements for the 6 months prior to the filing of the petition; professional business license; proof of professional insurance or a statement that none exists; completed Business Questionnaire sent by the trustee.

The failure to provide income information makes it impossible for the chapter 13 trustee to accurately assess the debtors' ability to perform the proposed plan. As such, the trustee cannot represent that the plan, in his estimation is feasible, under 11 U.S.C. § 1325(a) (6) .

The court will sustain the trustee's objection

#### Unclear and Uncertain Plan Provisions

Although the plan calls for payments of \$1,200.00 per month for a period of 60 months the trustee contends that the plan is not feasible because it provides for payment to an unnamed Class 6 creditor in the additional provisions. The trustee is uncertain who will be paid or the percentage which is to be paid to this creditor.

The court presumes that the payment is intended for Drew Prinz and Elizabeth Prinz as they are the only creditors listed in the schedules. The court also notes that the creditors have not yet filed a claim.

The court will sustain the trustee's objections.

## **GOOD FAITH**

### Failure to File Accurate and Complete Schedules

To determine bad faith a bankruptcy judge must review the "totality of the circumstances." *In re Goeb*, 675 F.2d 1386, 1391 (9th Cir.1982). "A bankruptcy court must inquire whether the debtor has misrepresented facts in his plan, unfairly manipulated the Bankruptcy Code, or otherwise proposed his Chapter 13 plan in an inequitable manner." *Id.*, at 1390.

The debtor is required to propose a plan in good faith under 11 U.S.C. § 1325(a)(3). Filing inaccurate schedules and statements and failing to promptly amend documents which are inaccurate does not evidence that the plan is proposed in good faith. The trustee indicates that he has received some bank statements from Bank of America from the debtor, but that these bank accounts have not been listed in the debtor's schedules.

The court will sustain this 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.

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.

27. [21-21850](#)-A-13     **IN RE: JACKQUELINE BARNES**  
[MMM-2](#)

MOTION TO MODIFY PLAN  
11-16-2021    [\[27\]](#)

MOHAMMAD MOKARRAM/ATTY. FOR DBT.

### **Final Ruling**

**Motion:** Modify Chapter 13 Plan

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

**Disposition:** Granted

**Order:** Prepared by movant, approved by the trustee

**Subject:** Chapter 13 Plan, filed November 16, 2021

The debtor seeks confirmation of her chapter 13 plan. The plan is supported by amended schedules I and J, filed October 19, 2021, ECF No. 22. The chapter 13 trustee has filed a non-opposition to the motion, ECF No. 36.

### **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.

28. [18-27654](#)-A-13     **IN RE: JASON/MOLLY ZYSMAN**  
[DEF-9](#)

MOTION TO MODIFY PLAN  
11-2-2021    [\[94\]](#)

DAVID FOYIL/ATTY. FOR DBT.

### **Tentative 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. The debtors filed supplemental Schedules I and J on November 2, 2021, in support of this motion, ECF No. 100.

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).

### Under Withholding Taxes

The trustee contends that the proposed plan is not feasible as the debtors' Supplemental Schedule I indicates Molly Zysman has a monthly gross income of \$9,855.38, but only withholds \$246.56 monthly for taxes, Medicare, and social security deductions. The Declaration of Molly Zysman states, "I am not taking out as much as I should on taxes because I need the disposable income in order to survive." See ECF No. 97, 7:7-8. The trustee contends the debtor is under withholding taxes. The debtors reside in separate households and debtor, Molly Zysman, has not indicated how she will pay any income taxes owed during the pendency of the plan.

### Section 7.05 of the Plan inaccurately Reflects Prior Distributions

The trustee contends that Section 7.05 of the plan inaccurately reflects payments which have been tendered under the plan to the Internal Revenue Service. The trustee's records reflect that \$2,548.11 has been disbursed on the unsecured portion of the IRS claim while the proposed modified plan states that the amount has been paid on the secured portion of the claim. This discrepancy is important as it directly impacts the feasibility of the proposed plan.

The debtors have not sustained their burden of proof regarding plan feasibility and the court will deny the motion to modify.

### **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.

29. [18-27654](#)-A-13     **IN RE: JASON/MOLLY ZYSMAN**  
[DPC-3](#)

CONTINUED MOTION TO DISMISS CASE  
10-19-2021    [[90](#)]

DAVID FOYIL/ATTY. FOR DBT.  
DAVID CUSICK/ATTY. FOR MV.

**Tentative Ruling**

**Motion:** Dismiss Case

**Notice:** Continued from November 16, 2021

**Disposition:** Granted

**Order:** Civil minute order

The hearing on this motion was continued from November 16, 2021, to allow for hearing on the debtor's motion to modify the chapter 13 plan. The motion to modify, DEF-9 has been denied. The trustee has filed a status report, ECF No. 107. In his report the trustee indicates that the proposed modified plan was filed to address the delinquency of \$15,708.00 alleged in the trustee's motion to dismiss. Unless the plan is modified the delinquency will not be cured.

The court finds that the plan delinquency and the debtors' failure to modify the plan constitute unreasonable delay. The court will grant 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 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 granted.

30. [21-23759](#)-A-13     **IN RE: MARY BUAN-IGNACIO**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK  
12-8-2021    [\[17\]](#)

RICHARD JARE/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 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).

### **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).

### Failure to Provide Income Information

The debtor has failed to provide the trustee with required income tax returns for the 2020 tax year under 11 U.S.C. § 521(e) (2) (A). The tax returns are essential to the trustee's review of the proposed plan prior to the meeting of creditors.

The failure to provide tax returns makes it impossible for the chapter 13 trustee to accurately assess the debtor's ability to perform the proposed plan. As such, the trustee cannot represent that the plan, in his estimation is feasible, under 11 U.S.C. § 1325(a) (6).

The court notes that the failure to timely provide the tax returns is also a basis for the dismissal of the case as the debtor is required to provide the trustee with a 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 also failed to provide the trustee with copies of pay advices for the 60 day period prior to the filing of the petition. Specifically, the debtor has failed to provide her October 2021 pay advice(s) or pay advices for her non-filing spouse for the period of September 2021 through October 2021.

The plan is not feasible under 11 U.S.C. § 1325(a) (6).

### **COMMUNITY PROPERTY/CLAIMS**

The trustee objects to confirmation on several bases all surrounding the need for additional information regarding community assets, obligations, and income. The debtor is married and has indicated a financial agreement exists between she and her spouse regarding the maintenance of separate finances. The trustee has requested the debtor provide the details of the agreement and the legal basis for excluding presumed community assets, income and claims from the bankruptcy estate. This information impacts whether the proposed plan may be confirmed.

First, the trustee cannot determine if the debtor's interest in all community property assets have been listed in the schedules. This potentially impacts the liquidation test, 11 U.S.C. § 1325(a) (4).

Second, the trustee cannot determine if the debtor is appropriately committing community income to the plan. Thus, the trustee cannot determine if the plan is proposed in good faith or is feasible, 11 U.S.C. §§ 1325(a) (3), (6). The trustee indicates that the debtor's spouse has weekly net income of approximately \$726.73, but this income is not scheduled.

The trustee also questions whether the debtor's plan and fiscal structure unfairly discriminates between community property creditors. Without the additional information requested by the



trustee he is unable to accurately assess the plan's compliance with 11 U.S.C. § 1322(b)(1).

The court finds that the debtor has not sustained her burden of proving that her plan complies with all requirements for confirmation. 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.

31. [17-21962](#)-A-13     **IN RE: SUANNE GRANDERSON**  
[GEL-4](#)

MOTION TO RECONSIDER DISMISSAL OF CASE  
12-13-2021    [\[104\]](#)

GABRIEL LIBERMAN/ATTY. FOR DBT.  
DEBTOR DISMISSED: 12/07/2021

#### **Tentative Ruling**

**Motion:** Reconsider Dismissal of Case

**Notice:** LBR 9014-1(f)(2); no 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). 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 requests the court to reconsider the order dismissing the case on December 7, 2021.

#### **BACKGROUND**

The chapter 13 trustee brought a motion to dismiss the debtor's chapter 13 case because the plan extended beyond the 60 month term of the confirmed plan. The debtor opposed the motion stating her election to pay the sum of \$1,756.83 which would cure the

overextension by committing additional funds to pay the priority claim of the Franchise Tax Board in full. The hearing on the motion was scheduled on December 7, 2021, at 9:00 a.m. No appearance was made by the debtor's counsel at the hearing and the trustee indicated that the payment of \$1,756.3 had not yet been made. The court granted the motion to dismiss the case.

Debtor's attorney planned to telephonically attend the hearing on the motion via Court Call and arranged to do so, ECF No. 104, 2:22. On the day of the hearing counsel experienced technical difficulties with the telephone line and was unable to appear at the hearing, *id.*, 2:23-24.

The exhibits in support of this motion show that the debtor made her payment via TFS to the trustee. The motion contends that the payment was sent via TFS on December 1, 2021, but was not received by the trustee until December 8, 2021, the day after the hearing.

#### **RULE 60(b)**

Rule 60(b) permits a motion for relief from a judgment or order to be brought within a reasonable time not to exceed one year if the ground for the motion is "mistake, inadvertence, surprise, or excusable neglect." Fed. R. Civ. P. 60(b)(1), *incorporated by Fed. R. Bankr. P. 9024*.

The court finds that counsel's inability to appear telephonically at the hearing on December 7, 2021, is grounds for relief under Rule 60(b). The court will grant the motion on the following conditions: the trustee does not oppose the motion; and the trustee confirms that he has received the appropriate sums to cure the plan overextension.

#### **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 Reconsider Dismissal of Case 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.

32. [19-21764](#)-A-13     **IN RE: SHEMILA JOHNSON**  
[MMP-2](#)

CONTINUED MOTION TO MODIFY PLAN  
10-22-2021    [\[63\]](#)

MICHELE POTERACKE/ATTY. FOR DBT.

**Tentative Ruling**

**Motion:** Confirm Chapter 13 Plan

**Notice:** Continued from December 1, 2021

**Disposition:** Denied

**Order:** Civil minute order

**Subject:** Modified Chapter 13 Plan filed October 22, 2021

The hearing on this matter was continued from December 1, 2021, to allow the debtor to file amended schedules I and J evidencing her ability to fund the chapter 13 plan.

The debtor requests confirmation of her chapter 13 plan filed October 22, 2021. The trustee has filed opposition to the plan. The most recently filed Schedules I and J were filed July 19, 2019, ECF No. 32.

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).

**FEASIBILITY**

The debtor must prove that the plan is 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). Case Number: 2019-21764 Filed: 12/1/2021 Doc # 72 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).

Here, the debtor has not carried that burden. In this case, the movant's Schedules I and J were filed on July 19, 2019. Consequently, they are not recent enough to be probative of the debtor's ability to perform the plan. The debtor has not supported the plan by filing recently amended Schedules I and J. Without those documents, the court is unable to determine whether the plan is feasible or whether the plan has been proposed in good faith. See 11 U.S.C. § 1325(a)(3), (6). Despite a continued hearing the debtor has failed to file the amended schedules.

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 her chapter 13 plan 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 motion is denied.

33. [19-24464](#)-A-13     **IN RE: ERNESTO MELENDRES AND LINDA AVITIA**  
[DPC-1](#)

CONTINUED MOTION TO DISMISS CASE  
10-19-2021    [\[34\]](#)

T. O'TOOLE/ATTY. FOR DBT.  
DAVID CUSICK/ATTY. FOR MV.  
RESPONSIVE PLEADING

#### **No Ruling**

34. [19-24464](#)-A-13     **IN RE: ERNESTO MELENDRES AND LINDA AVITIA**  
[TMO-2](#)

OBJECTION TO CLAIM OF INTERNAL REVENUE SERVICE, CLAIM NUMBER  
8-1  
11-9-2021    [\[46\]](#)

T. O'TOOLE/ATTY. FOR DBT.  
T. O'TOOLE/ATTY. FOR MV.  
RESPONSIVE PLEADING

#### **No Ruling**

35. [21-23769](#)-A-13     **IN RE: ELIZABETH CHAN-MAYETTE**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK  
12-13-2021    [\[14\]](#)

MARY TERRANELLA/ATTY. FOR DBT.

### **Tentative Ruling**

**Objection:** Trustee's Objection to Confirmation of Plan

**Notice:** LBR 3015-1(c)(4), 9014-1(f)(2); written opposition filed by the debtor

**Disposition:** Resolved by stipulation

**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.

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 chapter 13 trustee objects to confirmation of the debtor's plan contending that the proposed plan does not pass the liquidation test of 11 U.S.C. § 1325(a)(4).

The debtor expects to receive an inheritance in an unknown amount. The trustee objects as the plan does not account for the receipt of the inheritance. The trustee has indicated in his objection that he does not oppose the resolution of this objection by adding language in the order confirming the plan which addresses the payment of the non-exempt portion of the inheritance into the plan.

The debtor has filed an opposition to the objection, ECF No. 22. In her opposition the debtor agrees to pay any non-exempt portion of the inheritance into the plan. The debtor has submitted a proposed order confirming the plan with this provision as an exhibit with her reply, ECF No.23. The court approves the stipulation of the parties to include such a provision in an order or future amended plan. The current plan may not be confirmed as the court has sustained the Bank of New York Mellon's objection to confirmation, NLL-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 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 resolved by stipulation. The debtor shall pay the non-exempt portion of the inheritance proceeds into the chapter 13 plan.

36. [21-23769](#)-A-13     **IN RE: ELIZABETH CHAN-MAYETTE**  
[NLL-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY THE BANK OF NEW YORK  
MELLON  
12-17-2021    [\[18\]](#)

MARY TERRANELLA/ATTY. FOR DBT.  
NANCY LEE/ATTY. FOR MV.

#### **Tentative Ruling**

**Motion:** Objection to Confirmation by Bank of New York Mellon

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

**Disposition:** Sustained

**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.

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).

#### **SECURED CLAIMS**

11 U. S. C. § 1325(a)(5)(B)(ii): Improper Classification of Secured Claim

The Bank of New York Mellon objects to confirmation, contending that since the debtor was delinquent on her residential home mortgage payment on the date of the petition that her classification of that claim in Class 4 (direct payment) is improper.

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 "not less than 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 most instances, the validity and amount of a secured debt is determined by state, not federal, law. 11 U.S.C. § 502(b) (1), §1322(e) ("the amount necessary to cure the default, shall be determined in accordance with the underlying agreement and applicable nonbankruptcy law"). Where, as here, the claim arises from a secured claim against the debtor's residence the "allowed amount of the secured claim" will be determined by the underlying note and deed of trust. A creditor expresses that "allowed amount" by filing a Proof of Claim; absent objection, the amount stated in the Proof of Claim, including the amount of the ongoing mortgage payment and any arrearage, is "deemed" allowed. 11 U.S.C. § 502(a).

Here, the plan places the secured creditor's claim in Class 4, yet the claim is in default and includes a pre-petition arrearage in the amount of \$8,831.31. Compare Claim No. 3 (reflecting delinquency) with 11 U.S.C. 502(a) (deemed allowance).

Two principles control this analysis. First, Chapter 13 debtors do not have an absolute right to make payments to unimpaired claims directly to the creditor effected. *In re Giesbrecht*, 429 B.R. 682, 685-86 (B.A.P. 9th Cir. 2010); *Cohen v. Lopez (In re Lopez)*, 372 B.R. 40 (9th Cir. BAP 2007), *aff'd*, and adopted by *Cohen v. Lopez (In re Lopez)*, 550 F.3d 1202 (9th Cir.2008) ("a debtor has no absolute right to make such [direct] payments"). The decision to allow, or to not allow, a Chapter 13 payments directly has always been discretionary. *Giesbrecht*, 429 B.R. at 690.

Thus, bankruptcy courts have been afforded the discretion to make the determination of when direct payments may or may not be appropriate based upon the confirmation requirements of § 1325, policy reasons, and the factors set forth by case law, local rules or guidelines. *Lopez*, 372 B.R. at 46-47 ("Reflecting the discretion granted by the Code, different courts and different circuits have different rules on the permissibility of direct payment, a fact unchanged by or since [*Fulkrod v. Barmettler (In re Fulkrod)*, 126 B.R. 584 (9th Cir. BAP 1991) *aff'd sub. nom.*, *Fulkrod v. Savage (In re Fulkrod)*, 973 F.2d 801 (9th Cir.1992)].")

*In re Giesbrecht*, 429 B.R. at 690 (emphasis added).

Second, at least where a residential mortgage is delinquent on the petition date, merely providing in the plan that the debtor will pay

the claim directly does not satisfy § 1325(a)(5). As Judge Lundin commented:

A bald statement that a creditor will be dealt with "outside the plan" fails to satisfy any of the statutory ways in which the Chapter 13 plan can provide for an allowed secured claim under 11 U.S.C. § 1325(a)(5)-- unless the creditor "accepts" being "outside" for whatever it might mean. "Outside" does not preserve the lien of the affected creditor and does not guarantee present value of collateral--rights the secured creditor otherwise has at confirmation under § 1325(a)(5). Placing a secured claim "outside the plan" cannot rescue confirmation of a plan that does not satisfy the confirmation tests for treatment of secured claims.

Keith M. Lundin, *Lundin On Chapter 13*, § 74.8, at ¶ 5.

Argument might be interposed to distinguish the classification problem described by Judge Lundin with respect to § 1325(a)(5) where the residential mortgage is not delinquent on the petition date because as a matter of law those mortgages cannot be modified. 11 U.S.C. § 1322(b)(2), (b)(5), (c)(2) (prohibiting a debtor from modifying a deed of trust applicable to their principal residence, except to cure a delinquency or extending the "last original payment schedule" to a date not later than plan completion).

Moreover, the mandatory form plan in the Eastern District of California Bankruptcy Court specifically contemplates and addresses this eventuality. LBR 3015-1(a). It provides:

*Class 1 includes all delinquent secured claims that mature after the completion of this plan, including those secured by Debtor's principal residence.*

*(a) Cure of defaults. All arrears on Class 1 claims shall be paid in full by Trustee. The equal monthly installment specified in the table below as the Arrearage dividend shall pay the arrears in full.*

*...*

*(b) Maintaining payments. Trustee shall maintain all post-petition monthly payments to the holder of each Class 1 claim whether or not this plan is confirmed or a proof of claim is filed.*

Chapter 13 Plan § 3.07, EDC 3-080.

In contrast, Class 4 of the plan for the Eastern District of California contemplates a debtor whose mortgage is fully current on the date the case is filed. It provides:

*Class 4 includes all secured claims paid directly by Debtor or third party. Class 4 claims mature after the*



completion of this plan, are not in default, and are not modified by this plan. These claims shall be paid by Debtor or a third person whether or not a proof of claim is filed[, ] or the plan is confirmed.

*Id.* at § 3.10.

Here, the treatment of the delinquent mortgage in Class 4 (direct payment by the debtor) does not satisfy § 1325(a)(5). See 11 U.S.C. § 1325(a)(5)(B)(ii); *Lundin On Chapter 13* at § 74.8. The creditor has not expressly accepted this treatment in the plan; this court will not infer acceptance from the creditor's silence. 11 U.S.C. § 1325(a)(5)(A); *In re Pardee*, 218 B.R. 916, 939-40 (B.A.P. 9th Cir. 1998), *aff'd*, 193 F.3d 1083 (9th Cir. 1999) (Klein, J. concurring and dissenting) ("[I]mplied acceptance is a troublesome theory that has been largely discredited in all but one application: the formality of acceptance of a chapter 13 plan by a secured creditor whose claim is not being treated in accord with statutory standards may be implied from silence"). In the alternative, the plan does not provide for payment of the allowed amount of the claim, i.e., ongoing mortgage plus the arrearage. 11 U.S.C. § 1325(a)(5)(B). Finally, the plan does not provide for surrender of the collateral. 11 U.S.C. § 1325(a)(5)(C). Moreover, the classification does not comply with the terms of the mandatory form plan for the Eastern District. Plan § 3.07, EDC 03-080; LBR 3015-1(a).

As a result, the plan does not comply with § 1325(a)(5) and will not be confirmed.

#### **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 Bank of New York Mellon's Objection to Confirmation of Plan 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 objection,

IT IS ORDERED that the objection is sustained.

37. [21-22570](#)-A-13     **IN RE: NENITA ANTONIO**  
[DPC-2](#)

MOTION TO DISMISS CASE  
12-6-2021    [\[28\]](#)

TIMOTHY WALSH/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### **Tentative Ruling**

**Motion:** Dismiss Case

**Notice:** LBR 9014-1(f)(1); written opposition filed by the debtor

**Disposition:** Granted

**Order:** Civil minute order

### **CASE DISMISSAL**

The chapter 13 trustee moves to dismiss this case as the debtor had not brought a motion to confirm her plan. The debtor opposes this motion as she filed a motion to confirm a chapter 13 plan, TJW-1. That motion has been denied.

For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. The debtor has failed to confirm a plan and there is no plan pending. This constitutes unreasonable delay which is prejudicial to creditors under 11 U.S.C. § 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 this chapter 13 case has been presented to the court. Having considered the motion, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is granted. The court hereby dismisses this case.

38. [21-22570](#)-A-13     **IN RE: NENITA ANTONIO**  
[TJW-1](#)

MOTION TO CONFIRM PLAN  
12-8-2021    [\[32\]](#)

TIMOTHY WALSH/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### **Final Ruling**

**Motion:** Confirmation of a Chapter 13 Plan

**Disposition:** Denied without prejudice

**Order:** Civil minute order

The debtor moves for confirmation of her chapter 13 plan. The plan was served on December 8, 2021, ECF No. 35. This provides only 28 days' notice to all parties in interest.

The debtor did not provide a sufficient period of notice of the hearing on the motion, or the time fixed for filing objections. Federal Rule of Bankruptcy Procedure 2002(a)(9) requires at least 21 days' notice of the time fixed for filing objections to confirmation of a plan. Federal Rule of Bankruptcy Procedure 2002(b) requires no less than 28 days' notice of the hearing to consider confirmation of a chapter 13 plan. To comply with both Federal Rule of Bankruptcy Procedure 2002(a)(9) and (b)(3) and Local Bankruptcy Rule 9014-1(f)(1), creditors and parties in interest must be given at least 35 days' notice of the motion. See LBR 3015-1(d)(1). Creditors and parties in interest received less than 35 days' notice mandated by these rules.

### **CIVIL MINUTE ORDER**

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

The debtor's Motion to Confirm Plan 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.

39. [21-22675](#)-A-13     **IN RE: DEDAN KIMANI**  
[PLG-2](#)

CONTINUED MOTION TO CONFIRM PLAN  
10-8-2021    [\[30\]](#)

STEVEN ALPERT/ATTY. FOR DBT.

**Final Ruling**

**Motion:** Confirm Chapter 13 Plan

**Notice:** Continued from November 16, 2021

**Disposition:** Granted

**Order:** Prepared by the movant, approved by the trustee

**Subject:** First Modified Chapter 13 Plan, filed October 8, 2021

The debtor seeks confirmation of his plan filed October 8, 2021. This matter was continued from November 16, 2021, to allow the parties to sign a Stipulation regarding the value of the debtor's vehicle. The valuation of the vehicle was the sole remaining hurdle to confirmation of the chapter 13 plan. The Stipulation has been signed by the parties, ECF No. 43 and approved by the court, ECF No 45.

**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.

40. [21-24078](#)-A-13      **IN RE: AARON BELTON**

MOTION FOR RELIEF FROM AUTOMATIC STAY  
12-9-2021    [\[10\]](#)

CALVIN CLEMENTS/ATTY. FOR MV.  
UMER MALIK VS.

### **Final Ruling**

This matter will be denied as moot. The case was dismissed on December 21, 2021, ECF No. 19. No appearances are required.

41. [21-23781](#)-A-13      **IN RE: LEILA MONDARES**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK  
12-13-2021    [\[15\]](#)

TIMOTHY WALSH/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

**Order:** Civil minute order

No responding party is required to file written opposition to the motion; opposition may be presented at the hearing. LBR 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 chapter 13 trustee has filed an objection confirmation of the debtor's plan because the debtor failed to provide tax returns prior to the meeting of creditors and failed to file tax returns as required by 11 U.S.C. §§ 1325(a)(9) and 1308.

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**

One such element is feasibility. 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).

#### Failure to Provide Income Information

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 produce a tax transcript or a copy of her federal income tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such documentation exists. Moreover, the debtor admitted at the meeting of creditors that she had not filed all her tax returns until the day prior to the meeting of creditors. The Internal Revenue Service has filed a claim reflecting no tax returns filed for 2019 and 2020, Claim No. 1.

The failure to provide income information makes it impossible for the chapter 13 trustee to accurately assess the debtor's ability to perform the proposed plan. As such, the trustee cannot represent that the plan, in his estimation, is feasible under 11 U.S.C. § 1325(a)(6).

The court notes that the failure to timely provide the tax returns is also a basis for the dismissal of the case as the debtor is required to provide the trustee with a 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:

Having considered the present objection to confirmation together with papers filed in support and opposition to it, and having heard the arguments of counsel, if any, and good cause appearing,

IT IS ORDERED that the objection is sustained.

42. [19-20882](#)-A-13     **IN RE: HENRY RODRIGUEZ**  
[PGM-4](#)

MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTORS  
ATTORNEY(S)  
11-23-2021    [\[109\]](#)

PETER MACALUSO/ATTY. FOR DBT.

### **Final Ruling**

**Application:** Allowance of Additional Compensation

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

**Disposition:** Approved

**Order:** Civil minute order

**Number of Requests for Additional Compensation:** First

**Additional Compensation Requested:** \$1,500.00

**Additional Cost Reimbursement Requested:** \$0

### **COMPENSATION AND EXPENSES**

In this chapter 13 case, Peter Macaluso, attorney for the debtors, has applied for an allowance of additional compensation. The applicant requests that the court allow compensation in the amount of \$1,500.00. The chapter 13 trustee has filed a non -opposition to the motion, ECF No. 114.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a trustee, examiner or professional person employed under § 327 or § 1103 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

### **SUBSTANTIAL AND UNANTICIPATED POST-CONFIRMATION WORK**

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. The plan also shows the attorney opted in pursuant to Local Bankruptcy Rule 2016-1(c). 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 LBR 2016-1(c).

In this case the applicant successfully modified the chapter 13 plan extending the plan length to 84 months as the debtor was impacted by the COVID-19 pandemic. The complications created by the pandemic were unanticipated at the time the case was filed and the extension of the plan to 84 months represents substantial work.

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis and allow additional compensation of \$1,500.00.

#### **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.

Peter Macaluso's application for allowance of additional compensation under LBR 2016-1(c) 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. The court allows the additional compensation in the amount of \$1,500.00. The court authorizes the fees to be paid through the plan by the chapter 13 trustee.

43. [21-24082](#)-A-13     **IN RE: TONIA BEAIRD**  
[MET-1](#)

MOTION TO EXTEND AUTOMATIC STAY  
12-13-2021    [\[12\]](#)

MARY TERRANELLA/ATTY. FOR DBT.

#### **Tentative Ruling**

**Motion:** Extend the Automatic Stay

**Notice:** LBR 9014-1(f)(2); trustee filed non-opposition

**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). 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 an extension of the automatic stay pursuant to 11 U.S.C. § 362(c)(3). The debtor's prior chapter 13 bankruptcy case, 19-27482, was filed on December 3, 2019, and dismissed for plan delinquency on November 18, 2021. This case was filed on December 6, 2021.

The debtor explains that the prior case was dismissed as she had unanticipated and significant vehicle repairs in the approximate amount of \$4,000.00. The debtor has indicated that the repairs have been made to the vehicle.



## **EXTENSION OF THE STAY**

Upon request of a party in interest, the court may extend the automatic stay where the debtor has had one previous bankruptcy case that was pending within the 1-year period prior to the filing of the current bankruptcy case but was dismissed. See 11 U.S.C. § 362(c)(3)(B). Procedurally, the automatic stay may be extended only "after notice and a hearing *completed* before the expiration of the 30-day period" after the filing of the petition in the later case. *Id.* (emphasis added). To extend the stay, the court must find that the filing of the *later case* is in good faith as to the creditors to be stayed, and the extension of the stay may be made subject to conditions or limitations the court may impose. *Id.*

For the reasons stated in the motion and supporting papers, the court finds that the filing of the current case is in good faith as to the creditors to be stayed. The motion will be granted.

## **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.

A motion to extend the automatic stay has been presented to the court in this case. Having considered the motion, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is granted, and the automatic stay of § 362(a) is extended in this case. The automatic stay shall remain in effect to the extent provided by the Bankruptcy Code.

44. [21-22885](#)-A-13     **IN RE: FAITH KNAPPENBERGER**  
[MRL-1](#)

MOTION TO CONFIRM PLAN  
11-19-2021    [\[29\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.

## **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).

The debtor seeks confirmation of her chapter 13 plan. The trustee opposes confirmation noting that the case is related to a chapter 13 case filed by the debtor's spouse, Curtis Knappenberger, Case No. 21-22911. The trustee also opposes confirmation of the plan in the related case.

#### **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).

#### Failure to Provide Income Information

The trustee contends that the debtor has failed to provide the trustee with required income tax returns for the 2019 and 2020 tax years. The debtor and her spouse filed separate income tax returns for these years and the trustee has not received all copies of the returns for these two tax years. The tax returns are essential to the trustee's review of the proposed plan prior to the meeting of creditors.

The failure to provide tax returns makes it impossible for the chapter 13 trustee to accurately assess the debtor's ability to perform the proposed plan. As such, the trustee cannot represent that the plan, in his estimation is feasible, under 11 U.S.C. § 1325(a)(6).

The court notes that the failure to timely provide the tax returns is also a basis for the dismissal of the case as the debtor is required to provide the trustee with a 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 also failed to provide pay advices for the 60 days period prior to the filing of the petition. She has also failed to provide pay advices for her spouse for the month of July 2021.

#### Failure to Provide Bank Statement

The debtor has failed to provide the trustee with a copy of the requested July 2021 statement for the account at SAFE Credit Union, 11 U.S.C. § 521(a) (3).

#### Inaccurate/Incomplete Schedules

The trustee contends that the following schedules are either incomplete or inaccurate: Schedule D as it relates to a missing obligation to USAA secured by a 2011 Dodge Ram vehicle; Schedule E as the amounts listed in the Schedules do not match the amounts to be paid pursuant to the proposed plan; Schedule F as it relates to common debts owed by debtor's spouse in the related chapter 13 case; Schedule H as it does not indicate the debtor's spouse as a co-debtor; Statement of Financial Affairs which fails to reflect business income; or Form 122C-2 which contains discrepancies regarding the debtor's income and that of her spouse, as well as appropriate tax withholding.

Because the information in the schedules and statements is incomplete and/or inaccurate the trustee cannot properly evaluate the plan's suitability for confirmation. This is particularly concerning as the plan must be administered consistently with that of the plan proposed by debtor's spouse.

#### **GOOD FAITH**

##### Failure to File Accurate and Complete Schedules

To determine bad faith a bankruptcy judge must review the "totality of the circumstances." *In re Goeb*, 675 F.2d 1386, 1391 (9th Cir.1982). "A bankruptcy court must inquire whether the debtor has misrepresented facts in his plan, unfairly manipulated the Bankruptcy Code, or otherwise proposed his Chapter 13 plan in an inequitable manner." *Id.*, at 1390.

The debtor is required to propose a plan in good faith under 11 U.S.C. § 1325(a) (3). Filing inaccurate schedules and statements and failing to promptly amend documents does not evidence that the plan is proposed in good faith. The court notes that as of December 29, 2021, neither the schedules nor the Statement of Financial Affairs have been amended

## **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.

45. [20-21786](#)-A-13     **IN RE: MONNALISSA O'DELL**  
[DPC-3](#)

OBJECTION TO CLAIM OF LOANME, INC., CLAIM NUMBER 4 AND/OR  
OBJECTION TO CLAIM OF TEA OLIVE LLC, CLAIM NUMBER 6  
11-8-2021    [\[79\]](#)

SCOTT JOHNSON/ATTY. FOR DBT.

### **Final Ruling**

The chapter 13 trustee has filed a dismissal of his Objection to Claim, DPC-3, pursuant to Fed. R. Bankr. P. 7041 and Fed. R. Civ. P. 41(a)(1)(A)(i). No parties have filed opposition to the objection. See ECF No. 87. The matter will be removed from the calendar. No appearances are required.

46. [21-20488](#)-A-13     **IN RE: KARL/PAULA LEET**  
[JSO-3](#)

MOTION TO MODIFY PLAN  
11-18-2021    [\[48\]](#)

JEFFREY OGILVIE/ATTY. FOR DBT.

### **Tentative Ruling**

**Motion:** Modify Chapter 13 Plan

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

**Disposition:** Granted

**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 Payments Conflict With Trustee Accounting

The trustee objects to the mathematical feasibility of the proposed plan as it incorrectly states the amounts paid into the plan. The trustee has suggested that the order confirming the modified plan include the following language to correct the error: "The total amount paid into the plan through month 9 (November 2021) is \$14,983.24, with payments beginning in December 2021 of \$607.78 for the remaining 51 months of the Plan."

This is a very minor change to the terms of the plan as it adjusts the amount of only \$150.00. The court will grant the motion with the inclusion of the trustee's requested language.

### Plan Fails to Provide For Mortgage Payments Under the Confirmed Plan

The trustee objects to the mathematical feasibility of the proposed plan. The prior confirmed plan provided for payments to Class 1 creditor Cenlar FSB. The trustee made disbursements to Cenlar pursuant to the previously confirmed plan (until the property was sold) as follows: \$10,344.46 in ongoing mortgage payments; \$2,169.77 in prepetition mortgage arrears; and \$1,035.27 in post-petition mortgage arrears.

The current plan removes Cenlar from Class 1 instead of providing for it in Class 4. This has the effect of invalidating payments made to this creditor under the prior confirmed plan.

The court will grant the motion only if the order confirming the modified plan provides for Cenlar in Class 4 and provides in the additional provisions that all payments previously made to Cenlar by the trustee are allowed in the amounts which have been paid.

### **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 granted with the inclusion of the language indicated in this ruling.

47. [20-24890](#)-A-13     **IN RE: BARBARA PATTERSON**  
[KLG-4](#)

MOTION TO CONFIRM PLAN  
11-22-2021    [\[75\]](#)

ARETE KOSTOPOULOS/ATTY. FOR DBT.

### **Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Granted

**Order:** Prepared by the movant, approved by the trustee

**Subject:** Fifth Amended Chapter 13 Plan, filed November 22, 2021, ECF No. 78

### **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 seeks confirmation of her chapter 13 plan, filed November 22, 2021. The trustee has filed a response wherein he indicates that he does not oppose confirmation of the Fifth Amended Plan, filed November 22, 2021, ECF No. 78. The trustee correctly notes that the plan previously filed at ECF No. 64 was also labeled "Fifth Amended Plan". However, the plan presently before the court was filed on November 22, 2021, and is the plan which was served and described in the instant Motion to Confirm, ECF No. 75, and the Proof of Service, ECF No. 79. Each document clearly identifies the plan filed on November 22, 2021, as the subject of the motion.

### **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.

The order confirming the plan shall identify the plan by the date filed and ECF No. 78.

48. [19-27092](#)-A-13     **IN RE: ABDULMALIK ABDULRAHMAN AND AISHA**  
WELLS  
[MMM-1](#)

MOTION TO PURCHASE REAL PROPERTY  
12-10-2021    [\[22\]](#)

MOHAMMAD MOKARRAM/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### **Final Ruling**

**Motion:** Approve New Debt

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

**Disposition:** Continued to March 1, 2022, at 9:00 a.m.

**Order:** Civil Minute Order

The debtors seeks to incur new debt to purchase a home. The property which the debtors intend to purchase has not been identified in the motion and there is no contract available for review. The chapter 13 trustee opposes the motion stating that he has not had an opportunity to review the information regarding the debtors' new employment. Each of the debtors has secured new employment in the last month.

Debtors are attempting to obtain a VA Loan in the amount of \$550,000.00 at 3.75% interest for a 360-month term; estimated monthly payment \$3,220.06. The debtors are currently renters with a housing expense of \$1,900.00 per month. The debtors indicate that their rent expense will increase in January 2022, although they have not indicated the amount of the rental increase.

Supplemental Schedules I and J have been filed indicating that the debtors can afford both the plan payment and the proposed monthly loan payment of principal and interest that would result from obtaining this financing, ECF No. 31. The debtors' net monthly income has increased from \$790.00 per month to \$2,628.00 per month, a sum which contemplates the higher housing expense. The debtors have indicated that they intend to file a modified plan, yet a motion to modify the plan has not been filed. The currently confirmed plan calls for payments of \$790.00 per month and pays 0% to the unsecured creditors.

The court notes that a contract for purchase of real property is not included with this motion. The court will not grant the motion without a contract to purchase identified real property.

The court will continue this motion to allow the debtors to file a modified plan and set it for hearing and to provide the contract for purchase of real property. Whether this motion to approve new debt is in the best interests of the bankruptcy estate can only be determined in the context of a proposed modified plan and with all relevant information as part of 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 motion to purchase real property and incur new debt is continued to March 1, 2022, at 9:00 a.m.

IT IS FURTHER ORDERED that not later than January 18, 2022, the debtors shall file and serve a modified plan and set it for hearing.

IT IS FURTHER ORDERED that not later than January 18, 2022, the debtors shall file and serve any additional evidence in support of the motion to purchase real estate.

49. [21-23197](#)-A-13     **IN RE: CLAUDE WILKES**  
[CDW-3](#)

AMENDED OBJECTION TO CLAIM OF JPMORGAN CHASE BANK, NATIONAL  
ASSOCIATION, CLAIM NUMBER 3  
11-22-2021    [\[51\]](#)

CLAUDE WILKES/ATTY. FOR MV.  
RESPONSIVE PLEADING

**No Ruling**

50. [21-23197](#)-A-13     **IN RE: CLAUDE WILKES**  
[CDW-4](#)

MOTION TO CONVERT CASE FROM CHAPTER 13 TO CHAPTER 11  
12-3-2021    [\[66\]](#)

CLAUDE WILKES/ATTY. FOR MV.

**No Ruling**

51. [21-23781](#)-A-13     **IN RE: LEILA MONDARES**

OBJECTION TO CONFIRMATION OF PLAN BY PHH MORTGAGE  
CORPORATION  
12-20-2021    [\[19\]](#)

TIMOTHY WALSH/ATTY. FOR DBT.  
FANNY WAN/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:** Overruled

**Order:** Civil minute order

Creditor, PHH Mortgage Corporation objects to the chapter 13 plan contending that the arrears owed to it are higher than those stated in the proposed chapter 13 plan. Since the filing of its objection to confirmation PHH Mortgage has filed a claim, Claim No. 3 which indicates that as of the petition date its arrears were \$18,247.05. The plan, ECF No. 3, provides for arrears to PHH Mortgage in the amount of \$21,746.35.

No responding party is required to file written opposition to the motion; opposition may be presented at the hearing. LBR 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.

### **CHAPTER 13 PLAN SECTION 3.02**

Section 3.02 of the plan provides that the proof of claim, not the plan, controls the amount and classification of the creditor's claim unless the claim amount or classification is otherwise altered by the court after ruling on one of the three types of matters listed in the section. This means that the plan's understatement of the pre-petition arrears on a Class 1 claim does not reduce the amount of the arrears reflected in a filed proof of claim.

The objection will be overruled because: 1) the plan does not understate the amount of prepetition arrears; and 2) any understatement of the prepetition arrears in the plan does not alter or affect the creditor's rights.

### **NO DOCKET CONTROL NUMBER**

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.

## CIVIL MINUTE ORDER

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

Having considered the present objection to confirmation together with papers filed in support and opposition to it, and having heard the arguments of counsel, if any, and good cause appearing,

IT IS ORDERED that the objection is overruled.

52. [21-24175](#)-A-13     **IN RE: PETE GARCIA**  
[PGM-1](#)

MOTION TO EXTEND AUTOMATIC STAY  
12-21-2021    [\[10\]](#)

PETER MACALUSO/ATTY. FOR DBT.

### **Tentative Ruling**

**Motion:** Extend the Automatic Stay

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

**Disposition:** Denied

**Order:** Civil minute order

The debtor requests an order extending the automatic stay under 11 U.S.C. § 362(c)(3).

This is the fourth chapter 13 case filed by the debtor since 2018. None of the plans have been completed in the three prior chapter 13 cases. The last case 20-21974 was dismissed on October 20, 2021, for plan delinquency. The Civil Minutes from the hearing on the prior motion to dismiss show that the debtor intended to sell real property to cure the plan delinquency, 20-21974, ECF No. 91. The plan payments in the prior case were \$5,511.35 per month. The court also notes that a motion to extend the automatic stay was granted in the prior case, 20-21974, ECF No. 21.

In this case the debtor has filed a chapter 13 plan which proposes payments of \$4,600.00 per month and a sale of real property within 6 months. The debtor's Schedules I and J show that the debtor has income of \$5,300.00 per month and that after tender of the proposed plan payment the debtor has only \$700.00 for all living expenses. The plan payment represents 87% of the debtor's total monthly income. Neither the declaration of the debtor or the instant motion for extension of the stay indicate whether any of the debtor's properties are currently listed for sale.

Upon request of a party in interest, the court may extend the automatic stay where the debtor has had one previous bankruptcy case that was pending within the 1-year period prior to the filing of the current bankruptcy case but was dismissed. See 11 U.S.C. §

362(c)(3)(B). The motion and notice of hearing must be filed before the expiration of the 30-day period following the date of the petition. The hearing on such motion must also be completed before the expiration of this period. 11 U.S.C. § 362(c)(3)(B). The court must find that the filing of the later case - not the previous case - is in good faith as to the creditors to be stayed. *Id.*

This statute further provides that "a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)" in cases in which "a previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was dismissed within such 1-year period, after the debtor failed to - [(i)] file or amend the petition or other documents as required by this title or the court without substantial excuse . . . ; [(ii)] provide adequate protection as ordered by the court; or [(iii)] perform the terms of a plan confirmed by the court." *Id.* § 362(c)(3)(C)(i)(II).

Additionally, "a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)" in cases in which "there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11 or 13 or any other reason to conclude that the later case will be concluded - [(i)] if a case under chapter 7, with a discharge; or [(ii)] if a case under chapter 11 or 13, with a confirmed plan that will be fully performed." *Id.* § 362(c)(3)(C)(i)(III).

The debtor has offered insufficient evidence that the current case was filed in good faith as to the creditors to be stayed. See 11 U.S.C. § 362(c)(3)(B). A presumption, moreover, that the current case was not filed in good faith arises. Insufficient evidence has been offered to rebut this presumption. The supporting declaration does not point to any substantial change in the personal and financial affairs of the debtor since the dismissal of his previous case. The motion will be denied.

#### **CIVIL MINUTE ORDER**

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

The debtor's motion to extend the automatic stay has been presented to the court. Having considered the motion together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the motion is denied.

53. [21-23819](#)-A-13     **IN RE: GEORGIA/MILTON MERCER**  
[APN-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY THE BANK OF NEW YORK  
MELLON  
12-22-2021    [[47](#)]

STEELE LANPHIER/ATTY. FOR DBT.  
AUSTIN NAGEL/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.

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).

Creditor, Bank of New York Mellon objects to confirmation of the debtors' plan. The creditor has filed a claim in the amount of \$169,265.15 which is secured by a deed of trust in the debtors' residence. The proposed plan lists the obligation in Class 2 and values the collateral at \$0. The debtors have not yet filed a motion to value the creditor's collateral and the plan fails to otherwise provide for payment of the claim.

### **FAILURE TO VALUE COLLATERAL OF CLASS 2 CLAIMS**

LBR 3015-1(i) provides that the hearing on a motion to value collateral "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 value the collateral of the objecting creditor. The creditor holds a deed of trust in the debtors' real property which is their residence. See Claim No. 7. But the debtors have not yet obtained a favorable order on a motion to value the creditor's collateral. Accordingly, the court must deny confirmation of 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.

Bank of New York Mellon'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.