

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

Honorable Christopher M. Klein  
Bankruptcy Judge  
Sacramento, California

**January 24, 2023 at 1:30 p.m.**

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- |    |                                |                |                                 |
|----|--------------------------------|----------------|---------------------------------|
| 1. | <a href="#">17-27307</a> -C-13 | KIMBERLY WELCH | CONTINUED MOTION TO SELL        |
|    | <a href="#">RWH</a> -6         | Ronald Holland | 12-21-22 [ <a href="#">95</a> ] |

An order approving the motion to sell was entered January 12, 2023. Dkt. 105. No appearance at the January 24, 2023 hearing is required.

2. [22-22915](#)-C-13 REBECCA BIRD  
[DVW](#)-1 Mikalah Liviakis

OBJECTION TO CONFIRMATION OF  
PLAN BY U.S. BANK, NA  
1-4-23 [[21](#)]

**Tentative Ruling:**

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 19 days' notice was provided. Dkt. 24.

**The Objection to Confirmation of Plan is overruled.**

Creditor, U.S. Bank, NA as Legal Title Trustee for Truman 2021 SC9 Title Trust ("Creditor"), opposes confirmation of the Chapter 13 plan on the basis that:

1. The plan is not feasible because it relies on the debtor receiving monthly contributions from her sons and a roommate but without any evidence they are able to make the contributions for the life of the plan; and

2. The plan was not filed in good faith because the debtor does not have sufficient income to meet her monthly expenses and pay creditor's claim, and because debtor has not received the contributions prior to December 2022.

**DISCUSSION**

Debtor has provided the declarations under penalty of perjury from the debtor's sons and roommate that they are willing and able to contribute the \$800 per month. The debtor's counsel shall produce the originally signed declarations in accordance to Local Rule 9004-1(c)(1)(D). However, the Local Rules only provide for sanctions and is not reason to not confirm the plan.

No other grounds for objection remaining, it appears the plan complies with 11 U.S.C. §§ 1322 and 1325(a). The Objection is overruled, and the plan is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by U.S. Bank, NA, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection is overruled, and the debtor's Chapter 13 Plan (Dkt. 3), is confirmed. Counsel for the debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

3. [22-22943](#)-C-13 ANNE MARIE CARO  
[DWE](#)-1 Pro Se

OBJECTION TO CONFIRMATION OF  
PLAN BY FREEDOM MORTGAGE  
CORPORATION  
1-5-23 [[24](#)]

**Tentative Ruling:**

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 19 days' notice was provided. Dkt. 28.

**The Objection to Confirmation of Plan is sustained.**

Creditor, Freedom Mortgage Corporation ("Creditor"), opposes confirmation of the Chapter 13 plan on the basis that:

1. The plan is infeasible because it does not fully provide for creditor's arrearage as stated in its proof of claim, Claim No. 3.

**DISCUSSION**

The plan at Section 3.02 provides that Creditor's Proof of Claim, *and not the plan*, determines the amount and classification of a claim.

Notwithstanding whether the plan provides for the prepetition arrearage as Creditor argues, the debtor has not carried his burden to show the plan is adequately funded. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

That is reason to deny confirmation. Therefore, the Objection is sustained.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by Freedom Mortgage Corporation, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection is sustained.

4. [22-22943](#)-C-13 ANNE MARIE CARO  
[RDG](#)-1 Pro Se

OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D GREER  
1-3-23 [[20](#)]

**Tentative Ruling:**

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 21 days' notice was provided. Dkt. 23.

**The Objection to Confirmation of Plan is sustained.**

The Chapter 13 Trustee, Russell Greer ("Trustee"), opposes confirmation of the Chapter 13 plan on the basis that:

1. The plan was not filed in good faith because debtor did not use the required plan form, and the plan does not provide a percentage to general unsecured creditors and is incomprehensible;
2. Debtor has failed to provide 60 days of pay advices;
3. Debtor has failed to provide a copy of 2021 tax returns;
4. Debtor has failed to file a credit counseling certificate;
5. The plan fails the liquidation test;
6. Debtor's schedule lists an inaccurate figure for the median income in California and the Trustee is unable to determine whether the plan provides for all of debtor's disposable income for the applicable period of time; and
7. The plan is infeasible because it does not provide for Freedom Mortgage's arrearage, interest on arrears, and monthly dividend for arrearage, and the plan does not provide for Trustee compensation and expenses.

**DISCUSSION**

The plan at Section 3.02 provides that Creditor's Proof of Claim, *and not the plan*, determines the amount and classification of a claim.

Notwithstanding whether the plan provides for the prepetition arrearage, the debtor has not carried her burden to show the plan is adequately funded. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

The debtor has not provided the trustee with all required pay advices. 11 U.S.C. § 521(a)(1)(B)(iv); FED. R. BANKR. P. 4002(b)(2)(A).

That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

The debtor has not provided the trustee with all required tax returns. 11 U.S.C. § 521(e)(2)(A)(i); FED. R. BANKR. P. 4002(b)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

The debtor has non-exempt assets totaling \$1,140,950.00. The plan provides for a 0 percent dividend to unsecured claims, which is less than the 100 percent dividend necessary to meet the liquidation test. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(4).

That is reason to deny confirmation. Therefore, the Objection is sustained.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, Russell Greer, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection is sustained.

5. [19-22148](#)-C-13 VICTOR/VERONICA SAMPSON MOTION TO VACATE DISMISSAL OF  
[MRL](#)-1 Mikalah Liviakis CASE  
1-9-23 [[29](#)]  
CASE DISMISSED: 12/31/2022

**Tentative Ruling:**

The Motion has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 15 days' notice was provided. Dkt. 32.

**The Motion to Vacate is granted, and the Order Dismissing Case (Dkt. 26) is vacated.**

Debtors, Victor and Veronica Simpson, filed this Motion seeking to vacate this court's Order (Dkt. 26) dismissing their case on the basis that Debtors mistakenly, or excusably neglected, thought they would not have the income to further making plan payments after Victor lost his job.

The court issued its Order Dismissing Case after debtors moved to voluntarily dismiss the case after Victor lost his job. However, Victor was offered a new job with substantially similar income and now wish to continue to make payments under the plan.

**APPLICABLE LAW**

Federal Rule of Civil Procedure Rule 60(b), as made applicable by Federal Rule of Bankruptcy Procedure 9024, governs the reconsideration of a judgment or order. Grounds for relief from a final judgment, order, or other proceeding are limited to:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

FED. R. CIV. P. 60(b). A Rule 60(b) motion may not be used as a substitute for a timely appeal. *Latham v. Wells Fargo Bank, N.A.*, 987 F.2d 1199, 1203 (5th Cir. 1993). The court uses equitable principles when applying Rule 60(b). See 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 2857 (3d ed. 1998). The so-called catch-all provision, Federal Rule of Civil Procedure 60(b)(6), is "a grand reservoir of equitable power to do justice in a particular case." *Uni-Rty Corp. V. Guangdong Bldg., Inc.*, 571 F. App'x 62, 65 (2d Cir. 2014) (citation omitted). While the other enumerated provisions of Rule 60(b) and Rule 60(b)(6) are mutually exclusive, relief under Rule 60(b)(6) may be granted in extraordinary circumstances. *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863 & n.11 (1988).

A condition of granting relief under Rule 60(b) is that the requesting party show that there is a meritorious claim or defense. This does not require a showing that the moving party will or is likely to prevail in the underlying action. Rather, the party seeking the relief must allege enough facts that, if taken as true, allow the court to determine if it appears that such defense or claim could be meritorious. 12 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶¶ 60.24[1]-[2] (3d ed. 2010); see also *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984).

Additionally, when reviewing a motion under Rule 60(b), courts consider three factors: "(1) whether the plaintiff will be prejudiced, (2) whether the defendant has a meritorious defense, and (3) whether culpable conduct of the defendant led to the default." *Falk*, 739 F.2d at 463 (citations omitted).

Another consideration is the importance of finality of judgments. The standard for determining whether a Rule 60(b)(1) motion is filed within a reasonable time is a case-by-case analysis. The analysis considers "the interest in finality, the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to other parties." *Gravatt v. Paul Revere Life Ins. Co.*, 101 F. App'x 194, 196 (9th Cir. 2004) (citations omitted); *Sallie Mae Servicing, LP v. Williams (In re Williams)*, 287 B.R. 787, 793 (B.A.P. 9th Cir. 2002) (citation omitted).

## DISCUSSION

Debtors have completed forty-four monthly payments under the plan and wish to continue to complete the remaining 16 monthly payments. Debtors mistakenly believed they would not be able to complete the plan, but it now appears with the new job they will be able to do so.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Vacate filed by Victor and Veronica Simpson, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and the Order Dismissing Case (Dkt. 26) is vacated.



6. [22-22980](#)-C-13 VALERIE RAMIREZ  
[RDG](#)-1 Peter Macaluso

OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
12-29-22 [[29](#)]

**Tentative Ruling:**

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 26 days' notice was provided. Dkt. 32.

**The Objection to Confirmation of Plan is sustained.**

The Chapter 13 Trustee, Russell Greer ("Trustee"), opposes confirmation of the Chapter 13 plan on the basis that:

1. The plan relies on a motions to value collateral that have not been granted yet.

**DEBTOR'S OPPOSITION**

The debtor filed an Opposition on January 16, 2023. Dkt. 44. Debtor represents the motions to value collateral are set to heard on February 7, 2023 and requests a continuance of this motion for that date.

**DISCUSSION**

The plan proposes valuing the secured claims of Fast Auto Loans and Title Max. Before the court enters an order valuing that secured claim, the plan's feasibility is uncertain.

That is reason to deny confirmation. Therefore, the Objection is sustained.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, Russell Greer, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection is sustained.

**Tentative Ruling:**

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The movant has failed to file a Proof of Service.

**The Motion to Confirm is denied.**

The debtor filed this Motion seeking to confirm the Third Amended Chapter 13 Plan (Dkt. 153) filed on November 20, 2022.

The Chapter 13 Trustee filed an Opposition (Dkt. 161) on January 3, 2023, opposing confirmation on the following grounds:

1. Debtor has failed to provide copies of Debtor's 2021 income tax returns; and
2. Debtor has failed to provide Debtor's business's profit and loss statements.

Creditor, Jennine Banayat, filed an Opposition (Dkt. 168) on January 10, 2023, opposing confirmation on the following grounds:

1. The plan surrenders the property commonly known as 8609 Banf Vista Dr., Elk Grove, CA to all secured creditors but does not surrender the rental income since the filing of the case;
2. The plan does not provide for all of Banayat's deficiency claim;
3. The plan fails the liquidation test because debtor has non-exempt property in the Phillippines that can be used to pay unsecured claims;
4. The plan monthly payment exceeds the debtor's disposable income by almost \$200; and
5. The plan was not filed in good faith

The Michael J. Harrington Trust, assignee of secured creditor Boardwalk Island Trust, filed an Opposition (Dkt. 169) on January 10, 2023, opposing confirmation on the following grounds:

1. The plan fails to provide for repayment options for the junior secured creditors on the property;
2. Debtor will be in default upon confirmation of the plan because the plan does not provide for payments to all

secured creditors; and

3. Creditor joins in Banayat's and the Chapter 13 Trustee's objections.

#### **DEBTOR'S REPLY**

The debtor filed a reply (Dkt. 175) on January 17, 2023 representing that she filed the plan is feasible because she has surrendered the property to her secured creditors and in a Chapter 13 case adequate protection payments are not necessary because the property is undersecured. Debtor further represents she is remitting her tax returns and business profit and loss statements to the Chapter 13 Trustee.

#### **DISCUSSION**

The debtor has not provided the trustee with all required tax returns. 11 U.S.C. § 521(e)(2)(A)(i); FED. R. BANKR. P. 4002(b)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

The debtor has not filed all business documents including six months of profit and loss statements. 11 U.S.C. §§ 521(e)(2)(A)(i), 704(a)(3), 1106(a)(3), 1302(b)(1), 1302(c); FED. R. BANKR. P. 4002(b)(2) & (3). Debtor is required to submit those documents and cooperate with the Chapter 13 Trustee. 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1) & (a)(6).

The debtor appears to have non-exempt assets in the Phillippines totaling \$100,000.00. The plan provides for a 1 percent dividend to unsecured claims, which is less than the 35-45 percent dividend necessary to meet the liquidation test. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(4).

Upon review of the record, the court finds the plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Motion is denied, and the plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm filed by the debtor, Generosa Dizon, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is denied, and the plan is not confirmed.