

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

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

DAY: TUESDAY
DATE: FEBRUARY 1, 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. [17-20301](#)-A-13 **IN RE: GENEVA ESQUIVEL**
[JLB-3](#)

MOTION TO DETERMINE FINAL CURE AND MORTGAGE PAYMENT RULE
3002.1
12-20-2021 [\[74\]](#)

JAMES BRUNELLO/ATTY. FOR DBT.

Final Ruling

Motion: Determination of Final Cure and Payment of Required Post petition Amounts under Rule 3002.1(h)

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

Disposition: Resolved by stipulation

Order: Prepared by moving party

The parties have reached a stipulation and the court has signed the order approving the stipulation. This matter is removed from the calendar. No appearances are necessary.

2. [21-23702](#)-A-13 **IN RE: WILLIS/MISKA PEARSON**
[DPC-1](#)

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

JULIUS CHERRY/ATTY. FOR DBT.

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: Continued from January 5, 2022

Disposition: Sustained

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 hearing on the chapter 13 trustee's objection to confirmation was continued from January 5, 2022, for the parties to meet and confer regarding the issues raised in the objection and to file status reports.

The court ordered "that the debtor and trustee will meet and confer to address issues and *each party* shall file and serve a status report not later than January 18, 2022", Order, ECF No. 26 (emphasis added). The Civil Minutes also stated that the "Court is likely to

sustain the Objection without further notice or hearing, on a final basis, if a status report is not filed.” See ECF No. 25.

The trustee has filed a status report, ECF No. 27. In his report the trustee indicates that the parties have met and have agreed that the unsecured creditors shall be paid 100%. With that change in the order confirming the plan the trustee indicates that the issues raised in his objection are resolved.

The debtors have failed to file a status report as ordered, or otherwise oppose the trustee’s objection. As such, the court does not know if the debtors agree to the 100% provision as represented.

The court will sustain the trustee’s objection as the debtors have failed to file a status report as ordered. As such the debtors have failed to act in proper prosecution of their chapter 13 case, Fed. R. Civ. P. 41(b), Fed. R. Bankr. P. 7041.

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 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 debtors’ plan.

3. [19-24407](#)-A-13 **IN RE: MARIA TERESA MERCADO**
[WW-2](#)

MOTION TO INCUR DEBT
1-11-2022 [\[23\]](#)

MARK WOLFF/ATTY. FOR DBT.

No Ruling

4. [21-24115](#)-A-13 **IN RE: KATHIE GODBEHERE**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
1-13-2022 [\[23\]](#)

GABRIEL LIBERMAN/ATTY. FOR DBT.
1/18/22 FINAL INSTALLMENT PAYMENT \$313

Final Ruling

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

5. [21-24115](#)-A-13 **IN RE: KATHIE GODBEHERE**
[EAT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY WILMINGTON TRUST,
NATIONAL ASSOCIATION
1-4-2022 [\[20\]](#)

GABRIEL LIBERMAN/ATTY. FOR DBT.
CASSANDRA RICHEY/ATTY. FOR MV.

Final Ruling

Objection: Creditor's Objection to Confirmation of Plan

Notice: LBR 9014-1(f) (2)

Disposition: Overruled as moot

Order: Civil minute order

Wilmington Trust National Association has objected to confirmation of the debtor's plan contending that the proposed treatment of its claim in the plan contravenes 11 U.S.C. §§ 1322(b)(2), 1322(b)(5).

The debtor has filed an amended plan, ECF No. 29. A motion to confirm the amended plan is set for March 1, 2022, at 9:00 a.m.

THE CHAPTER 13 PLAN HAS BEEN SUPERSEDED

Chapter 13 debtors may modify the plan before confirmation. 11 U.S.C. § 1323(a). If the debtor files a modification of the plan under § 1323, the modified plan becomes the plan and supersedes the prior plan. 11 U.S.C. § 1323(b). Filing a modified plan renders moot any motion to confirm a prior plan. Because a modified plan has superseded the plan to which the creditor objects, the court will overrule the objection to confirmation as moot.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the motion to confirm is overruled as moot.

6. [20-25016](#)-A-13 **IN RE: FREDERICK BRISBY**
[DPC-3](#)

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

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

Final Ruling

Motion: Dismiss Case

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

Disposition: Conditionally Denied

Order: Civil minute order

The chapter 13 trustee has filed a motion to dismiss this case under 11 U.S.C. § 1307(c)(1) contending that the debtor's actions constitute unreasonable delay. Specifically, the trustee complains that while the debtor filed a fourth amended plan, ECF No. 139, on October 20, 2021, he has failed to file a motion to confirm the plan.

The debtor opposes the motion, ECF No. 159. In response to the trustee's motion to dismiss the debtor filed a motion to confirm the fourth amended plan, JV-7, on December 21, 2021.

The motion to confirm has been denied at the debtor's request. The debtor stated that he intends to file a further amended plan which reflects his current intentions and that the motion to confirm the amended plan will be heard on March 15, 2022. See Debtor's Response to Trustee's (sic) to Debtor(s) Motion to Confirm, ECF No. 158.

Additionally, the debtor specifically requested "the pending Motion to Dismiss filed by the Trustee be continued to March 15, 2022, to be heard currently (sic) with a new Motion to Confirm Chapter 13 Plan, and by which time the Debtor's mortgage modification should long be resolved." *Id.*, 2:17-21.

CASE DISMISSAL

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 September 30, 2020, and has been pending for approximately 16 months, yet a plan has not been confirmed. This constitutes unreasonable delay by the debtor that is prejudicial to creditors. The court will issue a conditional order.

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 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 motion is conditionally denied. It is denied on the condition that the debtor file, set for hearing, and serve an amended plan and motion to confirm the plan not later than February 7, 2022. If the debtor does not file, set for hearing, and serve an amended plan and motion to confirm the plan by February 7, 2022, then the case shall be dismissed on the trustee's declaration without further notice or hearing.

IT IS FURTHER ORDERED that the debtor shall confirm an amended plan not later than March 15, 2022. If the debtor does not confirm an amended plan by March 15, 2022, then the case shall be dismissed on the trustee's declaration without further notice or hearing.

7. [20-25016](#)-A-13 **IN RE: FREDERICK BRISBY**
[JV-7](#)

MOTION TO CONFIRM PLAN
12-21-2021 [[146](#)]

JASON VOGELPOHL/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

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

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 opposes the motion contending that: the plan fails to comply with 11 U.S.C. § 1325(b); the plan as proposed fails to accurately reflect the debtor's actual circumstances.

Additionally, the court finds that the plan is not feasible as proposed.

The debtor has filed a response to the trustee's opposition, ECF No. 158. In his response the debtor indicates that his intentions regarding his residence have changed, that he is currently pursuing a loan modification with the lender and will file a new motion to confirm a plan.

The debtor's response states:

Debtor will request the instant Motion to Confirm be denied and the pending Motion to Dismiss filed by the Trustee be continued to March 15, 2022, to be heard currently with a new Motion to Confirm Chapter 13 Plan, and by which time the Debtor's mortgage modification should long be resolved.

Debtor's Response to Trustee's (sic) to Debtor(s) Motion to Confirm, 2:15-21, ECF No. 158 (emphasis added).

Accordingly, the court will deny the debtor's motion to confirm and need not address the issues raised in the trustee's opposition to 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 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.

8. [21-23819](#)-A-13 **IN RE: GEORGIA/MILTON MERCER**
[SLE-4](#)

MOTION TO AVOID LIEN OF PORTFOLIO RECOVERY ASSOCIATES, LLC
12-29-2021 [\[51\]](#)

STEELE LANPHIER/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

No Ruling

9. [21-23819](#)-A-13 **IN RE: GEORGIA/MILTON MERCER**
[SLE-5](#)

MOTION TO VALUE COLLATERAL OF THE BANK OF NEW YORK MELLON
12-29-2021 [\[59\]](#)

STEELE LANPHIER/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

10. [21-23819](#)-A-13 **IN RE: GEORGIA/MILTON MERCER**
[SLE-7](#)

MOTION TO INCUR DEBT AND/OR MOTION TO APPROVE LOAN
MODIFICATION
12-30-2021 [\[66\]](#)

STEELE LANPHIER/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Approval of Mortgage Loan Modification

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

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).

The debtors seek an order approving a proposed modification of the loan secured by their residence. The chapter 13 trustee has filed a non-opposition to the motion, ECF No. 84.

LOAN MODIFICATION

The court construes the present motion as requesting two forms of relief. First, the motion requests approval of a loan modification agreement. While the ordinary chapter 13 debtor has some of the rights and powers of a trustee under § 363, such a debtor does not have the trustee's right to obtain credit or incur debt under § 364. See 11 U.S.C. § 1303. *But cf.* 11 U.S.C. § 1304 (providing that a chapter 13 debtor engaged in business has the rights and powers of a trustee under § 364). The court's local rules address this situation and require court authorization before a chapter 13 debtor obtains credit or incurs new debt. LBR 3015-1(h)(1)(E).

Second, the motion impliedly requests stay relief under § 362(d)(1) to insulate the secured lender from any claim of liability for "any act to collect, assess, or recover a claim against the debtor." See 11 U.S.C. § 362(a)(6), (d)(1).

The court will grant the motion to authorize the debtor and the secured lender to enter into the loan modification agreement subject to the parties' right to reinstatement of the original terms of the loan documents in the event conditions precedent to the loan modification agreement are not satisfied. The court will also grant relief from the stay of § 362(a) to allow the secured lender to negotiate and enter into the loan modification agreement with the debtor. 11 U.S.C. § 362(d)(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 court has reviewed the present motion for approval of a mortgage loan modification agreement between the debtor and the secured creditor named in the motion. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The court authorizes the debtor and the secured creditor to enter into the loan modification agreement subject to the parties' right to reinstatement of the original terms of the loan documents in the event conditions precedent to the loan modification agreement are not satisfied. To the extent the modification is inconsistent with the confirmed chapter 13 plan, the debtor shall continue to perform the plan as confirmed until it is modified.

IT IS FURTHER ORDERED that the court grants relief from the automatic stay to allow the secured lender to negotiate and enter into the loan modification agreement with the debtor. 11 U.S.C. § 362(d)(1). The automatic stay remains in effect for all acts not described in this order.

11. [21-23923](#)-A-13 **IN RE: CHRISTOPHER HUGHES**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
1-11-2022 [\[13\]](#)

AUGUST BULLOCK/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 as the debtor failed to attend the 341 meeting on 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. The court will sustain the 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.

12. [19-22327](#)-A-13 **IN RE: MICHAEL/BARBARA KISH**
[TLA-1](#)

MOTION TO INCUR DEBT
1-13-2022 [\[30\]](#)

THOMAS AMBERG/ATTY. FOR DBT.

Tentative Ruling

Motion: Approve New Debt - Refinance Mortgage Loan

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

Disposition: Granted

Order: Prepared by moving party

The debtors seek to incur new debt to refinance an existing mortgage loan. The purpose of the loan is to lower the interest rate on the mortgage and to withdraw money to make necessary repairs to the debtors' residence. The debtors require between \$14,000 to \$20,000 for the repairs. *See, Declaration of Debtors*, ECF No. 32, 1:21-25.

The trustee has filed opposition to the motion, ECF No. 35-36. The trustee indicates that the fees worksheet submitted as an Exhibit, ECF No. 32, shows that the payoff of \$344,188.72 is to be paid to the debtor. Any confusion created by this notation may be corrected in the order granting the motion and the trustee's approval of the closing statement through escrow.

Despite what appears to be a typographical error in the motion, the declaration in support of the motion and the exhibits in support of the motion show that the new payment is \$2,735.76 per month. Amended 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. 29. The court will grant the motion and approve the debtors' incurring of this new debt. The trustee will approve the order as to form and content.

13. [21-23928](#)-A-13 **IN RE: MONIQUE GARCIA**
[GEL-2](#)

MOTION TO CONFIRM PLAN
12-28-2021 [\[22\]](#)

GABRIEL LIBERMAN/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

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

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

PLAN FEASIBILITY

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

Plan Delinquency

The trustee indicates that the plan payments are delinquent in the amount of \$1,745.00 with another plan payment of \$1,745.00 due on January 25, 2022. The plan cannot be confirmed if the plan payments are not current. The court will sustain this objection.

SALE OF VEHICLE

The trustee objects to confirmation of the debtor's plan as the debtor admitted at the 341 meeting that she sold her 2006 BMW XS without first obtaining permission from the court.

The debtor has stated that she could not afford to make the repairs to the vehicle and that it was sold for \$1,500.00 to a disinterested third party. The debtor states that she used the funds to make her first plan payment.

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.

14. [21-23928](#)-A-13 **IN RE: MONIQUE GARCIA**
[GEL-3](#)

MOTION TO SELL
1-13-2022 [[29](#)]

GABRIEL LIBERMAN/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

15. [21-21334](#)-A-13 **IN RE: DANIEL LUPINA**
[DPC-2](#)

MOTION TO DISMISS CASE
1-3-2022 [\[107\]](#)

HARRY ROTH/ATTY. FOR DBT.

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

The chapter 13 trustee seeks an order dismissing this case. The trustee's previous objection to confirmation was sustained on November 16, 2021. The debtor has failed to file an amended plan and set it for confirmation.

CASE DISMISSAL

For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. The case was filed on April 13, 2021. The debtor has failed to confirm a plan within a reasonable time. The case has been pending for approximately 9 months, yet a plan has not been confirmed. The debtor has failed to file a new plan after the court sustained the trustee's objection to the original plan. This constitutes unreasonable delay by the debtor that is prejudicial to creditors.

The debtor has filed opposition to the motion, ECF No. 114. In his opposition the debtor states that it is his intention to convert this case to a chapter 7. The case has not yet been converted. The debtor's opposition does not resolve the trustee's 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 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.

16. [21-23137](#)-A-13 **IN RE: TAMMY CHACON**
[TLA-1](#)

MOTION TO MODIFY PLAN
12-20-2021 [\[22\]](#)

THOMAS AMBERG/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

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: First Modified Chapter 13 Plan, filed December 20, 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).

Debtor seeks an order confirming her chapter 13 plan. The debtor filed Schedules I and J at the inception of the case on September 1, 2021, evidencing her ability to fund the plan. The chapter 13 trustee has filed a non-opposition to the plan.

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.

17. [21-23641](#)-A-13 **IN RE: JOHN CYPRESS**
[DPC-1](#)

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

MARK SHMORGON/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: Continued from January 5, 2022

Disposition: Overruled

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 trustee's objection to confirmation was continued from January 5, 2022, to allow the debtor to appear at the 341 meeting, amend documents and bring plan payments current. The trustee has filed a status report, ECF No. 21. In his report the trustee states that all deficiencies have been corrected and that he no longer wishes to pursue his objection to confirmation.

The court will overrule the trustee's objection and confirm 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 overruled. A confirmation order shall be submitted by the debtor after approval by the chapter 13 trustee.

18. [21-21742](#)-A-13 **IN RE: ISAC/LORENA ALVAREZ**
[DPC-3](#)

MOTION TO DISMISS CASE
1-3-2022 [\[51\]](#)

JENNIFER LEE/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Continued to March 15, 2022, at 9:00 a.m.

Order: Civil minute order

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 debtors have failed to confirm a plan within a reasonable time, after the court denied confirmation of the debtors' previous plan on November 16, 2021, ECF No. 48. This constitutes unreasonable delay by the debtor that is prejudicial to creditors.

The debtors oppose the motion stating that they intend to file a motion to confirm an amended plan. An amended plan has been filed and the motion to confirm the plan is set for March 15, 2022, at 9:00 a.m. The court will continue the hearing on this motion to coincide with the motion to confirm the amended 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.

IT IS ORDERED that the chapter 13 trustee's motion to dismiss is continued to March 15, 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.

19. [18-23747](#)-A-13 **IN RE: BOBBY CABESAS**
[BLG-3](#)

MOTION TO MODIFY PLAN
12-20-2021 [\[66\]](#)

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

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by movant, approved by the trustee

Subject: First Modified Chapter 13 Plan, filed December 20, 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).

The debtor seeks an order modifying his chapter 13 plan. On December 20, 2021, the debtor filed Supplemental Schedules I and J evidencing his ability to fund the plan, ECF No. 71. The chapter 13 trustee has filed a non-opposition to the motion to modify, ECF No. 76.

CHAPTER 13 PLAN MODIFICATION

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

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

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

20. [18-23747](#)-A-13 **IN RE: BOBBY CABESAS**
[DPC-2](#)

CONTINUED MOTION TO DISMISS CASE
11-17-2021 [\[60\]](#)

CHAD JOHNSON/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.

Final Ruling

Motion: Dismiss Chapter 13 Case
Notice: Continued from December 17, 2021
Disposition: Denied
Order: Civil Minute Order

The hearing on the trustee's motion to dismiss was continued from December 17, 2021, to coincide with the hearing on the debtor's motion to modify plan (BLG-3).

The debtor's motion to modify has been granted. At the prior hearing on this motion the trustee consented to this motion being dismissed without further notice or hearing if the motion to modify was granted, ECF No. 74.

The court will deny this motion to dismiss.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the chapter 13 trustee's motion to dismiss is denied.

21. [21-23848](#)-A-13 **IN RE: GERMAN/MARIANA GARCIA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
1-14-2022 [\[27\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.
1/18/22 FINAL INSTALLMENT FEE PAID \$234

Final Ruling

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

22. [21-23352](#)-A-13 **IN RE: RAYMOND LOPEZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
1-4-2022 [\[15\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.
1/4/22 INSTALLMENT FEE PAID \$75

Final Ruling

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

23. [19-22153](#)-A-13 **IN RE: LESLIE/KIM ROSS**
[MET-2](#)

MOTION TO VALUE COLLATERAL OF GULF HARBOUR INVESTMENTS CORP.
AND SPECIALIZED LOAN SERVICING, LLC
1-16-2022 [\[41\]](#)

MARY TERRANELLA/ATTY. FOR DBT.

Tentative Ruling

Matter: Motion to Value Collateral - Real Property Residence
Notice: LR 9014-1(f)(2) - written opposition filed by the trustee
Disposition: Denied as moot
Order: Civil minute order

Subject Property: 1764 Newark Court, Suisun City, California

The debtors request that the court value real property collateral. The collateral is the debtor's principal residence located at 1764 Newark Court, Suisun City, California. The debtors own the property jointly with their son Leslie G. Ross, Jr. The debtors hold a two thirds interest and their son a one third interest in the subject property.

The property is encumbered by two deeds of trust: a first deed of trust held by U.S. Bank Trust National Association in the amount of \$367,238.47 (Claim No. 24); and a second deed of trust held by Gulf Harbour Investments Corp. (indicated as Computershare Holdings, Inc. in the plan) in the amount of \$90,741.10 (Claim No. 13). Claim No. 13 indicates that the full amount of \$90,741.10 was in default on the date the petition was filed. The debtors and their son are listed on the deed of trust held by Gulf Harbour Investments Corp. as evidenced by the attachment to Claim No. 13. The debtors contend that the obligation to Gulf Harbour was discharged in a prior chapter 7 bankruptcy case, 2009-39332-B-7, filed on September 9, 2009, and discharged on January 14, 2010.

CONFIRMED PLAN

The debtors' confirmed plan defines Class 4 claims as follows:

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.

Debtors' Plan, Section 3.10, ECF No. 4 (emphasis added).

The debtors' plan, ECF No. 2, was confirmed on June 28, 2019. The plan provides for the claim of Gulf Harbour Investments Corp. in Class 4 with monthly payments of \$0 paid by the debtors.

"The provisions of a confirmed plan bind the debtor and each creditor, whether or not the claim of such creditor is provided for by the plan, and whether or not such creditor has objected to, has accepted, or has rejected the plan." 11 U.S.C. § 1327(a).

The debtors are bound by the terms of the plan which they have confirmed. The debtors have provided for the claim of Gulf Harbour Investments Corp. in Class 4. Class 4 claims are not subject to a motion to value collateral as they are *not modified by the plan*. Thus, the motion to value collateral is a moot issue.

MOOTNESS

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).

"[A] case is moot when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome." *City of Erie v. Pap's A.M.*, 529 U.S. 277, 287 (2000) (alteration in original) (quoting *County of Los Angeles v. Davis*, 440 U.S. 625, 631

(1979)) (internal quotation marks omitted). "The basic question in determining mootness is whether there is a present controversy as to which effective relief can be granted." *Nw. Envtl. Def. Ctr. v. Gordon*, 849 F.2d 1241, 1244-45 (9th Cir. 1988) (citing *United States v. Geophysical Corp.*, 732 F.2d 693, 698 (9th Cir.1984)).

The court will deny the debtors' motion to value collateral as moot.

CIVIL MINUTE ORDER

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

The debtors' Motion to Value Collateral of Gulf Harbour Investments Corp. and Specialized Loan Servicing, LLC 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 as moot.

24. [21-24053](#)-A-13 **IN RE: ALICIA MORELAND**
[JHK-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-27-2021 [\[16\]](#)

THOMAS AMBERG/ATTY. FOR DBT.
JOHN KIM/ATTY. FOR MV.
TD AUTO FINANCE LLC VS.; RESPONSIVE PLEADING

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2017 Kia Sedona

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).

Movant, TD Auto Finance, LLC, seeks an order for relief from the automatic stay under 11 U.S.C. § 362(d)(1). The plan, ECF No. 3, does not provide for the movant's claim. The movant indicates that the vehicle was voluntarily surrendered on March 4, 2021. The

debtor has filed a statement of non-opposition to the motion, ECF No. 24.

RELIEF FROM STAY

Section 362(d)(1) authorizes stay relief for cause shown. 11 U.S.C. § 362(d)(1). The debtor is obligated to make debt payments to the moving party pursuant to a loan contract that is secured by a security interest in the debtor's vehicle described above. The debtor has defaulted on the loan as postpetition payments are past due. The total postpetition delinquency is approximately \$559.50.

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

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

CIVIL MINUTE ORDER

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

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

TD Auto Finance, LLC's motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as a 2017 Kia Sedona, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

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

25. [21-23759](#)-A-13 **IN RE: MARY BUAN-IGNACIO**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
1-5-2022 [\[21\]](#)

RICHARD JARE/ATTY. FOR DBT.
1/18/22 INSTALLMENT FEE PAID \$156

Final Ruling

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

26. [21-23769](#)-A-13 **IN RE: ELIZABETH CHAN-MAYETTE**
[NLL-1](#)

CONTINUED 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.
RESPONSIVE PLEADING

Final Ruling

Objection: Creditor's Objection to Confirmation of Plan

Notice: Continued from January 5, 2022

Disposition: Overruled as moot

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 Bank of New York Mellon has objected to confirmation of the debtor's plan contending that the proposed treatment of its claim in the plan contravenes 11 U.S.C. § 1325(a)(5).

The debtor has filed an amended plan, ECF No. 39. A motion to confirm the amended plan is set for March 15, 2022, at 9:00 a.m.

THE CHAPTER 13 PLAN HAS BEEN SUPERSEDED

Chapter 13 debtors may modify the plan before confirmation. 11 U.S.C. § 1323(a). If the debtor files a modification of the plan under § 1323, the modified plan becomes the plan and supersedes the prior plan. 11 U.S.C. § 1323(b). Filing a modified plan renders moot any motion to confirm a prior plan. Because a modified plan

has superseded the plan to which the creditor objects, the court will overrule the objection to confirmation as moot.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the motion to confirm is overruled as moot.

27. [21-23969](#)-A-13 **IN RE: KRISTIE HER**
[APN-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TOYOTA MOTOR CREDIT
CORPORATION
1-6-2022 [\[18\]](#)

ANH NGUYEN/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 objects to confirmation of the debtor's plan contending that the plan improperly provides for its claim, proposes to pay an interest rate which is not appropriate, and that with the addition of the appropriate interest rate that the plan is not feasible.

THE PLAN

The proposed plan, ECF No. 12, provides for the creditor's claim in Class 2. The plan also indicates that the creditor's claim is not secured by a purchase money security interest. This indication is incorrect.

The objecting creditor has filed a claim, Claim No. 4. The attachments to the claim show that the debt owed to the objecting creditor is secured by a purchase money security interest

The plan improperly classifies the creditor's claim.

INTEREST RATE

The objecting creditor contends that the proposed interest rate of 1.95% is insufficient. The creditor seeks an order requiring interest on its secured claim at 6.25%.

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

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

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

Here, the plan provides for an interest rate of 1.95% on the objecting creditor's class 2 secured claim

The appropriate interest rate should be about 1% to 2% above the current prime rate of 3.25% as plead, given the nature of the security, the risk of default, and the lack of evidence submitted by the creditor that would warrant upward adjustment. So, the plan's proposed interest rate does not comply with *Till* and § 1325(a)(5)'s present value requirement. The proper interest rate on this class 2 claim should be at least 4.25%.

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.

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

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

28. [21-23969](#)-A-13 **IN RE: KRISTIE HER**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
1-10-2022 [\[23\]](#)

ANH NGUYEN/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 contending that the plan is not feasible under 11 U.S.C. § 1325(a)(6) and that the debtor is not contributing all available income to the plan under 11 U.S.C. § 1325(b).

PLAN FEASIBILITY

The proposed plan must be feasible. 11 U.S.C. § 1325(a)(6). Feasibility is a "factual determination" as to the plan's "reasonable likelihood of success." *First Nat'l Bank of Boston v. Fantasia (In re Fantasia)*, 211 B.R. 420, 423 (B.A.P. 1st Cir. 1997). The bankruptcy court needs to "be satisfied that the debtor has the present as well as the future financial capacity to comply with the terms of the plan." *Id.* As one court summarized feasibility, "Thus, a plan is not feasible and is not confirmable if a debtor's income will not support the plan's proposed payments. *In re Barnes*,

275 B.R. 889, 894 (Bankr. E.D. Cal.2002) ("[T]he debtors showed no disposable income with which to fund a plan.... [T]he debtors have been unable to actually pay the amount projected ... to the trustee."); *In re Bernardes*, 267 B.R. 690, 695 (Bankr. D.N.J. 2001) ("While the feasibility requirement is not rigorous ... the plan proponent must, at minimum, demonstrate that the Debtor's income exceeds expenses by an amount sufficient to make the payments proposed by the plan."); *In re Wilkinson*, 99 B.R. 366, 369 (Bankr. N.D. Ohio 1989) ("[D]ebtors will not be able to comply with the plan and make all payments thereunder.").” *In re Buccolo*, 397 B.R. 527, 530 (Bankr. D.N.J. 2008), *aff’d*, 2009 WL 2132435 (D.N.J. July 13, 2009).

Plan Delinquency

The trustee indicates that the plan payments are delinquent in the amount of \$540.00 with another payment of \$540.00 due January 25, 2022. The plan cannot be confirmed if the plan payments are delinquent.

11 U.S.C. § 1325(b)

Below Median Income

The debtor's income is below the median income. Thus, the debtor's disposable monthly income is determined by subtracting expenses in Schedule J from her income. The trustee has objected to the debtor's calculation of disposable monthly income on two bases.

First the trustee contends that the pay advices provided by the debtor show gross monthly income of \$6,682.00. The debtor's Schedule I shows gross monthly income of \$5,525.00, ECF No. 11. Thus, the amount available to pay creditors is higher than that which is proposed by the debtor, because the debtor has understated her income.

Second, the trustee contends that the deduction on Schedule I at Line 5d. is improper. The debtor testified at the 341 meeting that she did not have any retirement loan repayments and Schedule I shows a retirement loan repayment of \$570.00 per month. Thus, the deduction is improper, and the debtor is not paying all available income into the plan each month.

The court will sustain the 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.

29. [21-23472](#)-A-13 **IN RE: BARRY/GINA ROTHMAN**
[CJK-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY LAND HOME
FINANCIAL SERVICES, INC.
11-12-2021 [\[28\]](#)

MARY TERRANELLA/ATTY. FOR DBT.
CHRISTINA KHIL/ATTY. FOR MV.
ORDER APPROVING STIPULATION FILED 1/18/22

Final Ruling

This objection to confirmation has been resolved by stipulation of the parties. An order approving the stipulation was signed January 18, 2022, ECF No. 53. The matter will be removed from the calendar. No appearances are required.

30. [21-23472](#)-A-13 **IN RE: BARRY/GINA ROTHMAN**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P
CUSICK
11-10-2021 [\[24\]](#)

MARY TERRANELLA/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Trustee's Objection to Confirmation of Plan

Notice: Continued from December 7, 2021

Disposition: Continued to March 15, 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).

BACKGROUND

On November 10, 2021, the trustee filed his objection to confirmation of the debtor's chapter 13 plan, ECF No. 24. The

objection asserted: 1) that the meeting of creditors had been continued to allow for the filing of 2018, 2019 and 2020 income tax returns; 2) that the trustee was unable to assess the feasibility of the plan as Schedules I and J contained outdated and/or incomplete information; 3) that the trustee was unable to assess the feasibility of the plan as the debtor failed to fully disclose business income and expenses as the attachment to Schedule I and J had not been filed; and 4) that the plan was over extended and would take approximately 68 months to complete.

At the hearing on the objection the court continued the matter to February 1, 2022, at 9:00 a.m. The court ordered that "[n]ot later than January 18, 2022, each party will file a status report addressing any remaining issues". Order, ECF No. 34.

TAX CLAIMS

On January 17, 2022, the debtors filed a status report, ECF No. 46. The status report details the efforts of the debtors and counsel in communicating with the IRS to resolve the issues surrounding a disputed tax claim filed by the service. It appears from the report that additional time is required for the IRS to review the 2018 and 2019 tax returns and further amend its claim.

The court will continue the hearing on the trustee's objection to March 15, 2022, at 9:00 a.m. to allow the debtors to negotiate a further amended proof of claim with the IRS or to file an objection to the claim of the IRS.

TRUSTEE STATUS REPORT

Impact of Pleadings on Trustee's Objection is Unclear

The trustee filed a status report on January 18, 2022. In his status report the trustee indicated the following:

Debtors have filed a supplement to Schedule I to include the Debtor's employment information and the joint Debtor's business income, (DN 38), which the Trustee understands involves selling jewelry. Debtors have filed a supplement to Schedule J which increases their net monthly income to \$1,370.00, (DN 39), showing Barry Rothman as employed as a construction worker. Debtors filed a Business Income and Expense statement, (DN 40.)

Status Report, 2:9-14, ECF No. 51.

The court cannot determine if the trustee still opposes confirmation under 11 U.S.C. § 1325(a)(6) because the trustee has not indicated how the filed documents impact the feasibility of the debtors' plan. Indicating that the debtors have filed documents does not aid the court in assessing the trustee's objection to confirmation.

At a minimum the status report should: indicate that the trustee has reviewed the pleadings; state whether the pleadings resolve his objection(s); identify which issues remain for the court to resolve; present argument. Fed. R. Bankr. P. 9013, LBR 9014-1(d) (3) (A).

Unclear and Uncertain Request for Relief

The trustee's status report contains the following prayer, "WHEREFORE, Trustee requests that the court take this into consideration." See *Status Report*, 2:16, ECF No. 51.

This statement is inconsistent with the allegation in the status report that the plan term remains overextended. The court is unable to determine if the trustee requests that the court sustain his objection, or if he concedes the issues raised in his objection. The language requesting the court "consider" the evidence is unclear and uncertain. Future *argument and prayer* in status reports, objections, motions, oppositions, and replies should clearly state the trustee's position and the specific relief requested. Fed. R. Bankr. P. 9013, LBR 9014-1(d) (3) (A).

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 objection to confirmation is continued to March 15, 2022, at 9:00 a.m.

IT IS FURTHER ORDERED that not later than 14 days prior to the continued hearing date each party shall file a status report regarding this objection. The status reports shall comply with Fed. R. Bankr. P 9013, and LBR 9014-1(d) (3) (A) as indicated in the court's ruling in this matter.

IT IS FURTHER ORDERED that not later than 14 days prior to the continued hearing date, the debtors shall file any pleadings required to resolve the plan overextension and/or claim of the IRS.

31. [21-24175](#)-A-13 **IN RE: PETE GARCIA**
[JFL-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK,
NATIONAL ASSOCIATION
1-11-2022 [\[31\]](#)

PETER MACALUSO/ATTY. FOR DBT.
JAMES LEWIN/ATTY. FOR MV.

Tentative Ruling

Objection: Creditor's Objection to Confirmation of Plan

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

Disposition: Sustained in part; overruled in part; 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).

Secured creditor Wells Fargo Bank objects to confirmation of the debtor's plan claiming that the plan is not feasible under 11 U.S.C. § 1325(a)(6). The creditor's claim is secured by a deed of trust in the debtor's primary residence.

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).

The plan, ECF NO. 3, provides for the objecting creditor's claim in Class 1 with monthly ongoing mortgage payments of \$1,524.82 and arrears in the amount of \$76,958.41. The creditor has filed a claim, Claim No. 2 indicating arrears in the amount of \$71,638.29.

The plan provides for payment of the arrears upon sale of real property located at 2870 26th Avenue, Sacramento, California. The creditor contends that the debtor has not met his burden for confirmation of the plan as he has failed to provide information regarding the listing amount for the property.

The debtor has filed a reply, ECF No. 39. The debtor has listed the property located at 2870 26th Avenue, Sacramento, for sale with the cooperation of his ex-spouse. The plan provides for a sale to be concluded within 6 months. The court overrules this objection.

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, neither the trustee nor the objecting creditor was able to examine the debtor regarding the issues raised in this motion. For this reason, the court will sustain the 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.

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

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

32. [21-24082](#)-A-13 **IN RE: TONIA BEAIRD**
[AP-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A.
12-27-2021 [\[19\]](#)

MARY TERRANELLA/ATTY. FOR DBT.
WENDY LOCKE/ATTY. FOR MV.
RESPONSIVE PLEADING

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).

Wells Fargo Bank, N.A. objects to confirmation of the debtor's plan. Creditor holds a security interest in a 2007 Chevrolet Suburban Truck which the debtor has listed in Class 2 of the plan. The debtor has filed a reply indicating that negotiation regarding the value of the subject property is ongoing and expected to resolve prior to the hearing on this objection, ECF No. 30.

REDUCTION OF COLLATERAL VALUE WITHOUT A MOTION

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

In this case, the plan proposes to reduce Wells Fargo Bank's Class 2 secured claim based on the value of the collateral securing such claim. But the debtor has not yet obtained a favorable order on a motion to determine the value of such collateral. 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.

Wells Fargo Bank N.A.'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.

33. [21-24082](#)-A-13 **IN RE: TONIA BEAIRD**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
1-12-2022 [\[26\]](#)

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); 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.

REDUCTION OF COLLATERAL VALUE WITHOUT A MOTION

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

In this case, the plan proposes to reduce Wells Fargo Bank N.A.'s Class 2 secured claim based on the value of the collateral securing such claim. But the debtor has not yet obtained a favorable order

on a motion to determine the value of such collateral. 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.

34. [19-24685](#)-A-13 **IN RE: EMILIA ARDELEAN**
[TBG-7](#)

CONTINUED MOTION FOR COMPENSATION BY THE LAW OFFICE OF THE
BANKRUPTCY GROUP, P.C. FOR DANIEL J. GRIFFIN, DEBTORS
ATTORNEY(S)
11-19-2021 [[280](#)]

STEPHAN BROWN/ATTY. FOR DBT.
DEBTOR DISMISSED: 10/14/2021; RESPONSIVE PLEADING

Final Ruling

Application: Allowance of Final Compensation and Expense
Reimbursement

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

Disposition: Approved

Order: Civil minute order

Compensation: \$31,000.00

Expenses: \$2,087.92

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

BACKGROUND

In this Chapter 13 case, The Bankruptcy Group, P.C. has applied for an allowance of final compensation and reimbursement of expenses.

The application requests that the court allow compensation in the amount of \$31,000.00 and reimbursement of expenses in the amount of \$2,087.92. The applicant also asks that the court allow on a final basis all prior applications for fees and costs that the court has previously allowed on an interim basis.

An interim order was entered approving the compensation and reimbursement of expenses requested on August 3, 2021, ECF No. 231. The case was dismissed on October 14, 2021. The trustee is holding funds in the amount of \$37,739.00 pending the outcome of this hearing. This application requests that the chapter 13 trustee be allowed to disburse funds directly to the applicant.

The hearing on this motion was continued from December 17, 2021, to allow the applicant to augment the record and to allow for a response by the debtor.

The applicant has filed a response and a declaration indicating that it waives any additional compensation and reimbursement of expenses beyond that which was awarded in the interim order, ECF No. 294. The applicant further states that it waives any compensation or reimbursement of expenses in connection with the adversary proceeding filed in this case, No. 19-02135, *id.*

The debtor has filed a declaration indicating her support of both the amounts awarded to applicant and direct payment to the applicant by the chapter 13 trustee from the balance on hand, ECF No. 295.

COMPENSATION AND EXPENSES

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 13 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis. The court also approves on a final basis all prior applications for interim fees and costs that the court has allowed under § 331 on an interim basis.

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 Bankruptcy Group, P.C.'s application for allowance of final compensation and reimbursement of expenses has been presented to the court. Having considered the well-pleaded facts of the application, the responses and replies, if any,

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$31,000.00 and reimbursement of expenses in the amount of \$2,087.92. The aggregate allowed amount equals \$33,087.92. As of the date of the application, the applicant held a retainer in the amount of \$3,000.00. The amount of \$30,087.92 shall be allowed as an administrative expense to be paid through the plan, and the remainder of the allowed amounts, shall be paid from the retainer held by the applicant. The court also approves on a final basis all prior applications for interim fees and costs that the court has allowed under § 331 on an interim basis.

IT IS FURTHER ORDERED that the chapter 13 trustee is authorized to pay the fees and expenses allowed by this order directly to the applicant from the available funds on hand.

35. [21-23889](#)-A-13 **IN RE: SHARILYNN BONNARD**
[AP-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK NATIONAL
ASSOCIATION
1-12-2022 [\[17\]](#)

ERIC SCHWAB/ATTY. FOR DBT.
WENDY LOCKE/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

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 objects to confirmation of the debtor's plan contending that the plan is not feasible under 11 U.S.C. § 1325(a)(6).

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).

Creditor's claim is secured by a deed of trust in the debtor's primary residence. Creditor has filed Claim No. 2 which states that pre-petition mortgage arrears in the amount of \$75,553.22 are owed. The claim also indicates a monthly mortgage payment of \$2,411.02. The plan, ECF No. 11, provides for the claim in Class 1 with pre-petition arrears in the amount of \$45,000.00 and ongoing monthly mortgage payments of \$2,322.00. The creditor contends that the plan payment will need to increase by at least \$600.00 per month to pay the appropriate amount of pre-petition arrears and the increased monthly mortgage payment. The creditor further contends that Schedules I and J do not support such an increase. The court finds that the plan is not feasible as proposed.

CIVIL MINUTE ORDER

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

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

U.S. Bank National Association's 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 denied confirmation of the debtor's plan

36. [21-23894](#)-A-13 **IN RE: KAVEETA CHAND**
[DPC-1](#)

MOTION TO DISMISS CASE
12-21-2021 [\[14\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Chapter 13 Case

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

Disposition: Granted

Order: Civil minute order

The chapter 13 trustee moves to dismiss this case under 11 U.S.C. §§ 1307(c)(1), 521(a)(3), (4). The trustee contends that he has not received all documents to which he is entitled, and which are necessary for performance of his duties. The trustee also reports that the debtor failed to attend the meeting of creditors.

DISMISSAL

Section 1307(c) provides that the court may dismiss a chapter 13 case for cause. Failure to provide documents required by the chapter 13 trustee is cause. *See In re Robertson*, 2010 WL 5462500 (Bankr. S.C. 2010); *In re Nichols*, 2009 WL 2406172 (Bankr. E.D. N.C. 2009).

FAILURE TO PROVIDE DOCUMENTS

The list of documents that a chapter 13 debtor must surrender to the trustee is long. At a minimum it includes (1) pay advices for the 60 days prior to the petition, 11 U.S.C. § 521(a)(1)(B)(iv), Fed. R. Bankr. P. 1007(b)(1)(E); (2) a copy of the debtor's most recent federal income tax return (or a transcript thereof), 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3); (3) a photographic identification and proof of social security number, Fed. R. Bankr. P. 4002(b)(1); (4) evidence of "current monthly income," such as a post-petition pay stub, Fed. R. Bankr. P. 4002(b)(2)(A); (5) documentation of monthly expenses claimed under §§ 707(b)(2)(A), (B), 1325(b)(3); and (6) bank and investment account statements that reflect the balance on the date of the petition, Fed. R. Bankr. P. 4002(b)(2)(B). Pay stubs and tax returns are due to the trustee at least 7 days prior to the meeting of creditors. Fed. R. Bankr. P. 1007(b)(1)(E), 4002(b)(3). The remainder of these documents must be provided no later than the meeting of creditors. Fed. R. Bankr. P. 4002(b).

Section 521(a), (e) & Rule 4002(b) Documents

The debtor failed to provide the trustee with 60 days of employer payment advices received prior to the filing of the petition pursuant to 11 U.S.C. §521(a)(1)(B)(iv). The Debtor has failed to provide the Trustee with pay advices from September 17, 2021 through

November 16, 2021, where Schedule I shows the debtor has been employed by Platinum Security for the past 2 years.

The debtor failed to provide the trustee with a tax transcript or a copy of the 2020 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. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors, 11 U.S.C. §521(e)(2)(A)(1).

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.

For each of these reasons, the case is dismissed.

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, opposition and ancillary documents thereto the motion,

IT IS ORDERED that the motion is granted, and the case dismissed.

37. [21-23197](#)-A-13 **IN RE: CLAUDE WILKES**
[DPC-3](#)

MOTION TO DISMISS CASE
1-10-2022 [\[95\]](#)

Tentative Ruling

Motion: Dismiss 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). 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 chapter 13 trustee moves to dismiss this chapter 13 case contending: the debtor is not eligible under 11 U.S.C. § 109(e); plan payments are delinquent; debtor has failed to provide the trustee with a completed Domestic Support Obligation Checklist under LBR 3015-1(b)(6).

CASE DISMISSAL

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

Plan Delinquency

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 \$5,377.00 in plan payments. The trustee indicates that another payment of \$6,823.00 is due on January 25, 2022.

Domestic Support Obligation Checklist

Documents Required by Trustee. The debtor shall provide to the trustee, not later than the fourteen (14) days after the filing of the petition, Form EDC 3-088, *Domestic Support Obligation Checklist*, or other written notice of the name and address of each person to whom the debtor owes a domestic support obligation together with the name and address of the relevant state child support enforcement agency (see 42 U.S.C. §§ 464 & 466), Form EDC 3-086, *Class 1 Checklist*, for each Class 1 claim, and Form EDC 3-087, *Authorization*

*to Release Information to Trustee Regarding Secured
Claims Being Paid By The Trustee.*

LBR 3015-1(b)(6).

The trustee moves to dismiss this case as the debtor lists an obligation for child support in his schedules, yet he has failed to provide the trustee with the required form under LBR 3015-1(b)(6). Failure to provide the form prevents the trustee from performing his required reporting duties.

11 U.S.C. § 109(e)

The court heard the debtor's motion to confirm chapter 13 plan on January 19, 2022. The motion was denied. The court ruled that the debtor is not eligible for chapter 13 relief as his secured debt exceeds the limits of 11 U.S.C. § 109(e), See Civil Minutes, ECF No. 100.

The court will grant the motion to dismiss.

CIVIL MINUTE ORDER

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

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

The trustee's motion to dismiss 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.

38. [21-23298](#)-A-13 **IN RE: BARBARA MYERS**
[DPC-2](#)

MOTION TO DISMISS CASE
1-3-2022 [\[25\]](#)

CHINONYE UGORJI/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Withdrawn

Order: Civil minute order

The chapter 13 trustee has filed a motion to dismiss this case. The debtor opposes the motion and has filed a motion to confirm an amended plan and set it for hearing on March 1, 2022, at 9:00 a.m.

The trustee has filed a status report, ECF No. 40. In his report the trustee states that the debtor is current pursuant to the proposed amended plan and that the trustee no longer wishes to pursue his motion to dismiss.

DISCUSSION

Federal Rule of Civil Procedure 41 governs the circumstances where a party may withdraw a motion or objection. Fed. R. Civ. P. 41, *incorporated by* Fed. R. Bankr. P. 7041, 9014(c) (applying rule dismissal of adversary proceedings to contested matters). A motion or objection may be withdrawn without a court order only if it has not been opposed or by stipulation "signed by all parties who have appeared." Fed. R. Civ. P. 41(a)(1)(A). In all other instances, a motion or objection may be withdrawn "only by court order, on terms that the court considers proper." Fed. R. Civ. P. 41(a)(2). Here, the Chapter 13 trustee has signaled his abandonment of his objection. Neither the debtor(s), nor any creditor, has expressed opposition to the withdrawal of the trustee's objection. No unfair prejudice will result from withdrawal of the objection and the court will accede to the trustee's request.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the motion to dismiss, DPC-2, is withdrawn.