



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

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

DAY: TUESDAY
DATE: FEBRUARY 27, 2024
CALENDAR: 9:00 A.M. CHAPTER 13 CASES

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

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

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

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

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

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

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

Please also note the following:

- Parties in interest may connect to the video or audio feed free of charge and should select which method they will use to appear when signing up.
 - Members of the public and the press appearing by **ZoomGov** may only listen in to the hearing using the zoom telephone number. Video appearances are not permitted.
 - Members of the public and the press may not listen in to the trials or evidentiary hearings, though they may appear in person in most instances.
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To appear remotely for law and motion or status conference proceedings, you must comply with the following guidelines and procedures:

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

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

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PRE-HEARING DISPOSITION INSTRUCTIONS

RULINGS

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

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

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

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

CHANGES TO PREVIOUSLY PUBLISHED RULINGS

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

ERRORS IN RULINGS

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

1. [24-20101](#)-A-13 **IN RE: LINDA CATRON**

NOTICE OF INTENT TO DISMISS CASE IF DOCUMENTS ARE NOT TIMELY
FILED
1-12-2024 [[11](#)]

No Ruling

2. [24-20101](#)-A-13 **IN RE: LINDA CATRON**
[LC-3](#)

MOTION TO SET ASIDE
2-12-2024 [[22](#)]

LINDA CATRON/ATTY. FOR MV.
RESPONSIVE PLEADING

Tentative Ruling

Matter: Reconsideration of Order Denying Imposition of Automatic Stay

Notice: LBR 7056-1, 9014-1(f)(1); written opposition required

Disposition: Denied

Order: Civil minute order

Debtor, Linda Catron, moves the court to reconsider its ruling denying her motion to impose the automatic stay under 11 U.S.C. § 362(c)(4). The debtor states:

I am the debtor Linda Catron.

I filing this motion and request the court approve this motion on - shortened notice.

At the time of this hearing I would have cured the deficiencies in my schedules set a hearing for 2/27/24 to confirm this will be completed.

I require the automatic stay because my crediotrs (sic) have targeted me and my business and my partners business in a scheme to collude to commit the crime of espionage.

My Mortgage lender shellpoint stil to this day has not agreed to or taken responsibility for 'breaking into my my home and vandalizing my property which I discovered on or about Late August 2022.

This motion was denied on 1/30/24 at the hearing which i was unable t attend properly due to the clerks putting my phone on mute.

I did file the proof of service however the clerk misfiled my documents that the court mis fed and this should be corrected under excusable neglect.

I filed my notice of hearing to have my my case heard why my bankruptcy case should not be dismissed which will occur on 2/27/24 at 9am.

I have been a victim to 4 vilations of the stay and and 3willfl1 breaking enterings which now collectively are clearly collusive acts .

I have ben vitem of hacking to cover up the grimes along side of my partners who had the same issues.

Motion, ECF No. 22 (typos original).

Contrary to the debtor's contention, the Civil Minutes show that the debtor attended the hearing on the motion to impose the automatic stay on January 30, 2024. Civil Minutes, ECF No. 17.

RECONSIDERATION

Federal Rule of Civil Procedure 59(e) permits motions to alter or amend a judgment. Fed. R. Civ. P. 59(e), *incorporated by* Fed. R. Bankr. P. 9023. "Reconsideration of a judgment after its entry is an extraordinary remedy which should be used sparingly." *Id.* at 1255 n.1 (quoting 11 Charles Alan Wright et al., *Federal Practice and Procedure* § 2810.1 (2d. ed. 1995)).

"A motion for reconsideration under Rule 59(e) should not be granted, absent highly unusual circumstances, unless the district court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law." *McDowell v. Calderon*, 197 F.3d 1253, 1255 (9th Cir. 1999) (emphasis omitted) (internal quotation marks omitted). A clear or manifest error of law or fact "is the wholesale disregard, misapplication, or failure to recognize controlling precedent." *Oto v. Metro. Life Ins. Co.*, 224 F.3d 601, 606 (7th Cir. 2000). "A 'manifest error' is not demonstrated by the disappointment of the losing party." *Id.*

More recently, the Ninth Circuit has established "four basic grounds upon which a Rule 59(e) motion may be granted: (1) if such motion is necessary to correct manifest errors of law or fact upon which the judgment rests; (2) if such motion is necessary to present newly discovered or previously unavailable evidence; (3) if such motion is necessary to prevent manifest injustice; or (4) if the amendment is justified by an intervening change in controlling law." *Allstate Ins. Co. v. Herron*, 634 F.3d 1101, 1111 (9th Cir. 2011) (citing *McDowell v. Calderon*, 197 F.3d 1253, 1255 n.1 (9th Cir. 1999) (en banc) (per curiam)).

DENIAL OF MOTION TO IMPOSE AUTOMATIC STAY

In its prior ruling the court noted several procedural deficiencies which it included in its ruling.

Disregarding the procedural deficiencies, the court also held that the motion was denied for the following reasons.

The debtor has previously filed the following unsuccessful Chapter 13 cases in the Eastern District of California:

Case Number	Petition Filed	Attorney	Plan Confirmed	Date Dismissed	Reason for Dismissal
2018-23232	May 23, 2018	Eric Escamilla	No	October 19, 2018	Plan Delinquency; Failure to Confirm Plan
2018-26923	November 1, 2018	Ryan Stubbe	No	November 30, 2018	Failure to Timely File Documents
2019-24436	July 16, 2019	Pro Se	No	August 13, 2019	Failure to Timely File Documents
2023-20616	February 28, 2023	Pro Se	No	July 28, 2023	Plan Delinquency; Failure to Confirm Plan
2023-22522	July 31, 2023	Pro Se	No	October 19, 2023	Failure to File Documents

The instant case was filed as a skeleton. A Notice of Incomplete Filing was issued and states that the following documents have not been filed: 1) Chapter 13 Plan; 2) Form 122C-1 Statement of Monthly Income; 3) Schedule A/B - Real and Personal Property; 4) Schedule C - Exempt Property; 5) Schedule D - Secured Creditors; 6) Schedule E/F - Unsecured Claims; 7) Schedule G - Executory Contracts; 8) Schedule H - Codebtors; 9) Schedule I - Current Income; 10) Schedule J - Current Expend.; 11) Statement of Financial Affairs; and 12) Summary of Assets and Liabilities. Notice, ECF No. 11.

The debtor has failed to make a prima facie case for extension of the automatic stay. The court is unable to evaluate the debtor's financial circumstances without all the factual information which is required by the missing documents. The court notes that the failure to file documents is a reoccurring problem in the debtor's previous bankruptcy filings. For each of these reasons the court will deny the motion.

Civil Minutes, ECF No. 17.

Documents Not Filed

The debtor has not proven any error of fact or law upon which the motion was denied. Moreover, the deficiencies noted by the court have not been corrected by the debtor.

The debtor states that by the time of this hearing the debtor will have filed all the required documents. The court's docket shows that the debtor has not filed any of the missing documents identified in the court's ruling. Thus, there are still no schedules, statements, or Chapter 13 Plan, upon which the court can rely in analyzing the requested relief.

Trustee Opposition

The trustee opposes the motion to reconsider the order denying imposition of the automatic stay citing the debtor's previous unsuccessful Chapter 13 filings and failure to file documents as a primary basis for his opposition. The trustee also contends that to grant the motion would be potentially prejudicial to creditors which currently assume that the stay is not in effect.

Additionally, the court notes that the trustee has continued the meeting of creditors until April 11, 2024.

The court will deny the motion.

CIVIL MINUTE ORDER

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

The debtor's motion to reconsider the order denying imposition of the automatic stay has been presented to the court. Having considered the [motion/application/objection] 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.

3. [23-22603](#)-A-13 **IN RE: MASARU JACKSON**
[DPC-1](#)

CONTINUED MOTION TO DISMISS CASE
12-21-2023 [[18](#)]

MARY TERRANELLA/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case
Notice: Continued from January 30, 2024
Disposition: Denied
Order: Civil minute order

The hearing on this motion was continued from January 30, 2024, to allow for hearing on the debtor's motion to modify the chapter 13 plan. The motion to modify, (MET-1) has been granted.

Accordingly, the court will deny the motion to dismiss.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is denied.

4. [23-22603](#)-A-13 **IN RE: MASARU JACKSON**
[MET-1](#)

MOTION TO MODIFY PLAN
1-11-2024 [[22](#)]

MARY TERRANELLA/ATTY. FOR DBT.

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted

Order: Civil minute order

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

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

PLAN FEASIBILITY

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

Post Petition Mortgage Arrears

The previously confirmed plan and the modified plan provide for treatment of LoanCare, LLC in Class 1. Because the debtor failed to make plan payments timely under the previously confirmed plan, the trustee lacked sufficient funds to pay the post-petition contract installments to LoanCare, LLC totaling \$4,241.04 for the months of September, November, and December 2023. While the modified plan attempts to cure the post-petition arrearage, the plan does not specify to which monthly payments the cure is applicable. Thus, the trustee is unable to comply with §3.07(b) of the plan.

The trustee requests that any order granting the motion clarify that the arrearages are for the months of September, November, and December 2023.

Undisclosed Death Benefits

The trustee contends that the debtor has failed to fully disclose death benefits from his deceased wife's estate. As such the trustee cannot determine if the plan is feasible.

LIQUIDATION

(a) Except as provided in subsection (b), the court shall confirm a plan if--

. . .

(4) the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date;

. . .

11 U.S.C. § 1325(a) (4).

The debtor has proposed a 0% payment to unsecured creditors. The trustee calculates that the debtor's nonexempt assets are valued at \$4,146.00. Thus, the plan fails the liquidation test.

DEBTOR REPLY

On February 19, 2024, the debtor filed a reply to the trustee's opposition, which includes the declaration of the debtor and exhibits, ECF No. 38, 39, 40.

Proposed Order Resolves Liquidation and Mortgage Arrears Issues

Exhibit A is a proposed order granting the modification, ECF No. 39. In the order the debtor agrees to: (1) pay 100% to filed and allowed unsecured claims; and (2) cure mortgage arrearages for the months of September, November, and December 2023.

Undisclosed Assets

The debtor clarifies that he is not receiving any death benefit from his late wife's estate. Declaration, ECF No. 40.

Trustee Status Report

In response to the motion to dismiss (DPC-1) the Chapter 13 trustee has filed a status report. Status Report, ECF No. 33. In the report the trustee states that payments under the proposed plan are current.

The court finds that the debtor has sufficiently addressed all matters raised in the trustee's opposition to the motion. The court will grant the motion to modify the Chapter 13 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 debtor's motion to modify a chapter 13 plan has been presented to the court. Having considered the motion together with papers filed in support and opposition to it, and having heard the arguments of counsel, if any, and good cause appearing, presented at the hearing,

IT IS ORDERED that the motion is granted. The debtor shall submit an order confirming the modified plan which is consistent with this order and approved by the Chapter 13 trustee.

5. [20-21905](#)-A-13 **IN RE: DIANE MORRIS**
[DPC-3](#)

CONTINUED MOTION TO DISMISS CASE
12-21-2023 [[128](#)]

THOMAS AMBERG/ATTY. FOR DBT.

No Ruling

6. [20-21905](#)-A-13 **IN RE: DIANE MORRIS**
[TLA-5](#)

MOTION TO MODIFY PLAN
1-16-2024 [\[134\]](#)

THOMAS AMBERG/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

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

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

PLAN FEASIBILITY

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

Plan Delinquency

The trustee indicates that the plan payments are delinquent in the amount of \$1,00.00. The plan cannot be confirmed if the plan payments are not current.

MATHEMATICAL FEASIBILITY

The trustee opposes confirmation of the plan contending the plan is not mathematically feasible. The trustee calculates that the plan will take 61 months to fund as proposed.

The plan does not provide for payments to the trustee in an amount necessary for the execution of the plan. See 11 U.S.C. § 1322(a)(1). The court cannot confirm a plan with a period longer than 60 months. See 11 U.S.C. § 1322(d).

DEBTOR REPLY

On February 16, 2024, the debtor filed a reply and declaration, ECF No. 148, 149. The debtor states that: (1) she has returned to work and is no longer dependent upon disability payments to fund the plan; and (2) that on February 14, 2024, she tendered \$1,000.00 via a cashier's check to the Chapter 13 trustee.

The plan is supported by the debtor's supplemental Schedule I filed January 16, 2024, ECF No. 140. The schedule indicates that the debtor anticipated her return to work on February 14, 2024. The debtor also states that she will make a minor adjustment to the plan payment, an increase of approximately \$100 per month in order to resolve the plan overextension anticipated by the trustee.

The court will hear from the trustee regarding: (1) whether payments are current under the proposed plan, including the February 2024, payment; and (2) whether the proposed adjustment to the plan payment will remedy the plan overextension.

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

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

7. [23-24508](#)-A-13 **IN RE: MONIQUE WEINRICH**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK,
CHAPTER 13 TRUSTEE
1-22-2024 [[17](#)]

STEVEN ALPERT/ATTY. FOR DBT.

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: 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).

ORAL ARGUMENT

The issues in this matter having been sufficiently briefed by the trustee, the court finds that the matter does not require oral argument. LBR 9014-1(h); *Morrow v. Topping*, 437 F.2d 1155, 1156 (9th Cir. 1971) (approving local rules that authorize disposition without oral argument). Further, no evidentiary hearing is necessary for resolution of material, factual issues.

PLAN RELIES ON MOTION TO VALUE COLLATERAL

LBR 3015-1(i) provides that "[t]he hearing on a valuation motion or motion to avoid lien 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 feasibility of the plan relies upon the debtor's successful valuation of the collateral of creditor OneMain Financial Group, LLC. The need to value the collateral of OneMain is the sole basis for the trustee's objection to confirmation of the plan.

The court has granted the debtors' motion to value the collateral of OneMain Financial Group, LLC, (RLG-2).

Accordingly, the court will overrule the trustee's objection to confirmation.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the objection is overruled. The debtor shall submit an order confirming the plan which has been approved by the Chapter 13 trustee.

8. [23-24508](#)-A-13 **IN RE: MONIQUE WEINRICH**
[RLG-1](#)

MOTION TO VALUE COLLATERAL OF ONEMAIN FINANCIAL GROUP, LLC
1-19-2024 [\[13\]](#)

STEVEN ALPERT/ATTY. FOR DBT.
WITHDRAWN BY M.P.

Final Ruling

Motion: Value Collateral

Disposition: Denied without prejudice

Order: Civil minute order

The court will deny the motion without prejudice on grounds of insufficient service of process on the responding party. A motion to value collateral is a contested matter requiring service of the motion in the manner provided by Federal Rule of Bankruptcy Procedure 7004. Fed. R. Bankr. P. 4003(d), 9014(b); see also *In re Villar*, 317 B.R. 88, 92 n.6 (B.A.P. 9th Cir. 2004). Under Rule 7004, service on corporations and other business entities must be made by mailing a copy of the motion "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Fed. R. Bankr. P. 7004(b)(3).

Service of the motion was insufficient. The motion was not mailed to the attention of an officer, managing or general agent, or other agent authorized to accept service. The certificate of service only states that the following parties were served: (1) Debtor; (2) Trustee; and (3) U.S. Trustee. Certificate of Service, Section 5,

ECF No. 16. Moreover, there is no matrix affixed to the certificate indicating that any other parties were served with the motion. *Id.*

Additionally, the court notes that no parties were served pursuant to Rule 7004. Certificate of Service, Section 6A, ECF No. 16.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the motion is denied without prejudice.

9. [23-24508](#)-A-13 **IN RE: MONIQUE WEINRICH**
[RLG-2](#)

MOTION TO VALUE COLLATERAL OF ONEMAIN FINANCIAL GROUP, LLC
2-12-2024 [\[23\]](#)

STEVEN ALPERT/ATTY. FOR DBT.

Final Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle]

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

Disposition: Granted

Order: Civil minute order

Subject: 2014 Ford Fiesta

Value: \$5,349.00

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

The debtor seeks an order valuing the collateral of OneMain Financial Group, LLC, at \$5,349.00.

VALUATION OF COLLATERAL

Chapter 13 debtors may value collateral by noticed motion. Fed. R. Bankr. P. 3012. Section 506(a) of the Bankruptcy Code provides, "An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of

the value of such creditor's interest in the estate's interest in such property" and is unsecured as to the remainder. 11 U.S.C. § 506(a). For personal property, value is defined as "replacement value" on the date of the petition. *Id.* § 506(a)(2). For "property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." *Id.* The costs of sale or marketing may not be deducted. *Id.*

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

In this case, the debtor seeks to value collateral consisting of a motor vehicle described as a 2014 Ford Fiesta. The debt owed to the respondent is secured by a purchase money security interest. See 11 U.S.C. § 1325(a) (hanging paragraph). The court values the vehicle at \$5,349.00.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The personal property collateral described as a 2014 Ford Fiesta has a value of \$5,349.00. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$5,349.00 equal to the value of the collateral that is unencumbered by senior liens. The respondent has a general unsecured claim for the balance of the claim.

10. [23-23713](#)-A-13 **IN RE: JENNIFER PORE**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.
CUSICK
12-12-2023 [[15](#)]

CATHERINE KING/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: Continued from January 17, 2024

Disposition: Sustained and confirmation denied

Order: Civil minute order

Attorney Catherine King is ordered to appear in this matter at 9:00 a.m. on February 27, 2024, in Department A. Appearance may be made by telephone or Zoom.

The hearing on the Chapter 13 trustee's objection to confirmation was continued from January 17, 2024, to allow the debtors to: 1) file a statement of non-opposition; 2) file opposition to the objection; or 3) file an amended Chapter 13 Plan.

DEBTORS FAILED TO RESPOND AS ORDERED

Failure of counsel or of a party to comply with these Rules, with the Federal Rules of Civil Procedure or the Federal Rules of Bankruptcy Procedure, or with any order of the Court may be grounds for imposition of any and all sanctions authorized by statute or rule or within the inherent power of the Court, including, without limitation, dismissal of any action, entry of default, finding of contempt, imposition of monetary sanctions or attorneys' fees and costs, and other lesser sanctions.

LBR 1001-1(g).

On January 19, 2024, the court ordered:

IT IS ORDERED THAT the hearing on this objection will be continued to February 27, 2024, at 9:00 a.m.

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

(A) File a Statement of No Opposition. If the debtor(s) agree that the Chapter 13 trustee's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than January 30, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the

applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection not later than January 30, 2024; the response shall specifically address each issue raised in the trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than February 13, 2024. The evidentiary record will close after February 13, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the Chapter 13 trustee's objection by filing a modified plan, not later than January 30, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan; and

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

Order, ECF No. 20, (emphasis added).

The debtor failed to file: 1) any opposition to the trustee's objection; 2) an amended plan; or 3) a statement indicating that they do not intend to oppose the trustee's objection. The failure to comply with the court's order further delays hearing on the trustee's objection, and has caused additional, unnecessary work for the court.

The court's ruling required the debtor to file a pleading in this matter by January 30, 2024. The debtor(s) has failed to file any document which would apprise the court of her position regarding the trustee's objection to confirmation.

Counsel for the debtor shall be prepared to address this issue at the hearing on this matter, and to inform the court whether the debtor(s) concedes the objection.

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).

SOCIAL SECURITY DOCUMENTATION

(b) Individual debtor's duty to provide documentation
(1) Personal identification
Every individual debtor shall bring to the meeting of creditors under § 341:
(A) a picture identification issued by a governmental unit, or other personal identifying information that establishes the debtor's identity; and
(B) *evidence of social-security number(s), or a written statement that such documentation does not exist.*

Fed. R. Bankr. P. 4002 (emphasis added).

The debtor(s) failed to provide the required social security information at the meeting of creditors. The court will sustain the trustee's objection.

CIVIL MINUTE ORDER

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

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

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

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

11. [24-20214](#)-A-13 **IN RE: JACQUELINE COHEN**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
2-2-2024 [\[9\]](#)

Tentative Ruling

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

12. [23-21621](#)-A-13 **IN RE: ANGELO CHICO**
[DPC-2](#)

MOTION TO DISMISS CASE
1-26-2024 [\[44\]](#)

SCOTT JOHNSON/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Continued to March 26, 2024, at 9:00 a.m.

Order: Civil minute order

Opposition Due: February 13, 2024

Opposition Filed: February 13, 2024 - timely

Motion to Modify Plan Filed: February 14, 2024 - untimely

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the plan.

A modified plan has been filed, one day late and set for hearing in this case. In this case counsel has explained the reasons that a timely plan was not filed, and the court will allow the plan in the form of opposition to the trustee's motion. The scheduled hearing on the modification is March 26, 2024, at 9:00 a.m. The court will continue the hearing on this motion to dismiss to coincide with the hearing on the plan modification. If the modification is disapproved, and the motion to dismiss has not been withdrawn or otherwise resolved, the court may dismiss the case at the continued hearing.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the chapter 13 trustee's motion to dismiss is continued to March 26, 2024, at 9:00 a.m.

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.

13. [23-22421](#)-A-13 **IN RE: MICHELLE POSH**
[CDL-3](#)

MOTION TO CONFIRM PLAN
1-12-2024 [\[59\]](#)

COLBY LAVELLE/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by the movant, approved by the trustee

Subject: First Amended Chapter 13 Plan, filed January 12, 2024

DEFAULT OF RESPONDENT

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

The debtor seeks confirmation of the First Amended Chapter 13 Plan, ECF No. 62. The plan is supported by Schedules I and J filed, at the inception of the case 6 months prior to the filing of the motion. The Chapter 13 trustee has filed a non-opposition to the motion, 67.

CHAPTER 13 PLAN CONFIRMATION

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

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

14. [23-23323](#)-A-13 **IN RE: CASEY WOODBURY**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
1-29-2024 [\[61\]](#)

MARK SHMORGON/ATTY. FOR DBT.
1/30/2024 FINAL INSTALLMENT FEE PAID \$77

Final Ruling

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

15. [23-21724](#)-A-13 **IN RE: MARK/CYRIL SENORES**
[TWL-11](#)

MOTION TO CONFIRM PLAN
1-17-2024 [\[158\]](#)

TRACY WOOD/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied without prejudice

Order: Civil minute order

The motion requests confirmation of the Fourth Amended 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). For the following reasons the motion will be denied without prejudice.

SERVICE AND NOTICE

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

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

Matrix

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

list of persons who have filed Requests for Special Notice; and/or (4) the list of Equity Security Holders.

LBR 7005-1(a) (emphasis added).

In this case there were two certificates of service filed. Certificate of Service, ECF No. 162, 163. There is no matrix attached to the first certificate of service as required. See Certificate of Service, ECF No. 162. Accordingly, the court is unable to determine which parties were served with the motion or the address at which they were served. Service of the motion therefore does not comply with LBR 7005-1.

The second certificate of service appears only to serve the parties which have requested special notice, ECF NO. 163. Memorialization of service on all parties should be accomplished by filing one certificate of service, not multiple certificates. This ensures that the court is able to easily and accurately verify proper service of a proceeding.

The court will deny the motion without prejudice.

CIVIL MINUTE ORDER

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

The debtor's Motion to Confirm Chapter 13 Plan has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

16. [23-24427](#)-A-13 **IN RE: MICHAEL/TINA NELSON**
[RDS-1](#)

MOTION TO CONFIRM PLAN
1-19-2024 [[22](#)]

RICHARD STEFFAN/ATTY. FOR DBT.

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied without prejudice

Order: Civil minute order

The motion requests confirmation of the Amended 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). For the following reasons the motion will be denied without prejudice.

SERVICE AND NOTICE

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

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

Matrix

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

LBR 7005-1(a) (emphasis added).

In this case the movant has failed to attach the Clerk's Matrix to the certificate of service. Certificate of Service, ECF No. 25. Accordingly, service of the motion therefore does not comply with LBR 7005-1.

MOTION IS UNSUPPORTED BY EVIDENCE

The motion is not supported by evidence such as a declaration of the debtor as required. LBR 9014-1(d) (3) (D).

The court will deny the motion without prejudice.

CIVIL MINUTE ORDER

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

The debtors' Motion to Confirm Chapter 13 Plan has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

17. [24-20027](#)-A-13 **IN RE: RASUL SHEVCHENKO**
[MS-1](#)

CONTINUED MOTION TO VALUE COLLATERAL OF UKRAINIAN FEDERAL
CREDIT UNION
1-3-2024 [8]

MARK SHMORGON/ATTY. FOR DBT.

Final Ruling

The parties filed a stipulation resolving this matter, ECF No. 33. The court approved the stipulation on February 15, 2024, ECF No. 34. Accordingly, this matter will be removed from the calendar as moot. No appearances are required.

18. [23-21228](#)-A-13 **IN RE: DONALD CRAIG**
[ELH-2](#)

MOTION TO SET ASIDE DISMISSAL OF CASE
1-26-2024 [60]

ELIZABETH HURWITZ/ATTY. FOR DBT.
DEBTOR DISMISSED: 05/05/23

Tentative Ruling

Motion: Vacate Dismissal
Disposition: Denied without prejudice
Order: Civil minute order

Attorney Elizabeth Hurwitz is ordered to appear at the hearing on February 27, 2024, at 9:00 a.m. Appearance may be made by Zoom or Court call.

The debtor seeks an order vacating the dismissal of his bankruptcy proceeding under Fed. R. Civ. P. 60(b)(6) *incorporated by* Fed. R. Bankr. P. 9024.

The debtor filed the instant case, and allowed it to be dismissed, based upon the advice of an individual he believed to be an attorney. The debtor has since discovered that this individual is not an attorney. The debtor seeks to set aside the dismissal for the purposes of expunging the bankruptcy case.

The motion will be denied without prejudice for the following reasons.

NOTICE

"The due process requirements for notice are relatively minimal; they merely require notice 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'"

In re 701 Mariposa Project, LLC, 514 B.R. 10, 15 (B.A.P. 9th Cir. 2014) (citing *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 94 L.Ed. 865 (1950)).

LBR 9014-1(f)

In the Eastern District of California notice of a motion must comply with the requirement of LBR 9014-1(f)(1), (2). The rule allows a choice of two different notice periods. LBR 9014-1(f)(1) requires 28 days' notice of the motion and written opposition to be filed with the court and served on the moving party not later than 14 days prior to the hearing on the motion. Conversely, LBR 9014-1(f)(2) requires only 14 days' notice of the motion and does not require the opposing party to file and serve written opposition prior to the hearing on the motion. See, LBR 9014-1(f)(1), (2).

The notice of hearing in this case does not specify under which section the motion has been filed. Notice of Motion, ECF No. 61.

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

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

. . .

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

The notice filed and served in this matter does not advise respondents how to oppose the motion. Thus, it does not comply with LBR 9014-1(d). See, *Notice*, ECF No. 61.

The court cannot determine whether the motion is brought under LBR 9014-1(f)(1) or (f)(2). Nor will the court presume the conclusion an opposing party might reach about whether written opposition is necessary. The notice given in this matter does not satisfy the requirements of LBR 9014(d)(3)(B).

Creditors and parties in interest have not received "notice reasonably calculated . . . to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *SEC v. Ross*, 504 F.3d 1130, 1138 (9th Cir. 2007) (quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)). Further, LBR 9014-1(d)(3) requires that the notice of hearing advise potential respondents whether and when written opposition must be filed, the deadline for filing and serving it, and the names and addresses of the persons who must be served with the opposition. Because creditors do not have adequate notice of when and how to present their objections, due process has not been satisfied.

SERVICE

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

Use of Form EDC 7-005 is Mandatory

The service of pleadings and other documents in adversary proceedings, contested matters in the bankruptcy case, and all other proceedings in the Eastern District of California Bankruptcy Court by *either attorneys, trustees, or other Registered Electronic Filing System Users* shall be documented using the Official Certificate of Service Form (Form EDC 007-005) adopted by this Court.

LBR 7005-1 (emphasis added).

The form certificate of service is intended to allow parties to memorialize service efficiently and accurately, and to aid the court in ensuring sufficient service is achieved in each proceeding. Pursuant to LBR 7005-1 use of Form EDC 7-005 is mandatory in this matter.

Dismissal of Action for Failure to Comply with Local Rules

Failure of counsel or of a party to comply with these Rules, with the Federal Rules of Civil Procedure or the Federal Rules of Bankruptcy Procedure, or with any order of the Court may be grounds for imposition of any and all sanctions authorized by statute or rule or within the inherent power of the Court, including, without limitation, *dismissal of any action*, entry of default, finding of contempt, imposition of monetary sanctions or attorneys' fees and costs, and other lesser sanctions.

LBR 1001-1(g) (emphasis added).

The movant has failed to use Form EDC 7-005 in memorializing service in this matter. Certificate of Service, ECF No. 64. The motion will be denied without prejudice.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the motion is denied without prejudice.

19. [23-22628](#)-A-13 **IN RE: MIGUEL DIAZ AND GUADALUPE SANCHEZ**
[TJW-1](#)

MOTION TO VACATE DISMISSAL OF CASE
1-30-2024 [\[29\]](#)

TIMOTHY WALSH/ATTY. FOR DBT.
DEBTORS DISMISSED: 01/19/24
RESPONSIVE PLEADING

Final Ruling

Motion: Vacate Dismissal of Case

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

Disposition: Denied without prejudice

Order: Civil minute order

The debtors seek an order vacating the dismissal of the Chapter 13 case. For the following reasons the motion will be denied without prejudice.

SERVICE

A certificate of service was filed in support of this motion, ECF No. 31. The certificate fails to indicate that the debtors served all creditors and interested parties with the motion. *Id.*, page 2, No. 5. Moreover, the Clerk's Matrix for the case is not attached to the certificate of service indicating that all creditors and interested parties in this case were served. *Id.*

In this case all creditors and parties in interest are potentially impacted by the motion and are entitled to notice of the motion. The court orders the debtor to serve the trustee, the U.S. Trustee, and all creditors with any further motion to vacate the dismissal of the case. Fed. R. Bankr. P. 9013.

Altered Matrixes: Special Notice Parties; Registered Users

The service of pleadings and other documents in adversary proceedings, contested matters in the bankruptcy case, and all other proceedings in the Eastern District of California Bankruptcy Court by either attorneys, trustees, or other Registered Electronic Filing System Users shall be documented using the Official Certificate of Service Form (Form EDC 007-005) adopted by this Court. In addition to other requirements stated on the Official Certificate of Service Form:

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

list of persons who have filed Requests for Special Notice; and/or (4) the list of Equity Security Holders.

- (b) For persons served electronically pursuant to their consent to such service (not ECF Registered User service by the Clerk of the Court), a copy of the written consent to such electronic service must be attached to the Certificate of Service.
- (c) When a Clerk's Office Matrix is attached to the Certificate of Service, for the persons not served by that method of service, the filer shall strike out the names of such persons *not served by that method of service*.
- (d) Where the Clerk's Matrix of Creditors is attached to the Certificate of Service form, such list shall be downloaded not more than *7 days prior to the date of serving the pleadings and other documents and shall reflect the date of downloading*. The serving party may download that matrix either in "pdf label format" or in "raw data format." Where the matrix attached is in "raw data format," signature on the Certificate of Service is the signor's representation that no changes, e.g., additions, deletions, modifications, of the data have been made except: (1) formatting of existing data; or (2) removing creditors from that list by the method described in paragraph (c) of this rule.

The Official Certificate of Service Form (Form EDC 007-005) may be found on the Court's Website using the Bankruptcy Forms, Forms and Publications link.

LBR 7005-1.

Both matrixes attached to the certificate of service have been altered. The matrix dates have been handwritten on the matrixes. Certificate of Service, Attachment 6B1, 6B3. This contravenes LBR 7005-1(d).

The court will deny the motion without prejudice.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the motion is denied without prejudice.

20. [23-23928](#)-A-13 **IN RE: THOMAS/DIANE FOSTER**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.
CUSICK
12-20-2023 [\[26\]](#)

CHAD JOHNSON/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Trustee's Objection to Confirmation

Notice: Continued from January 17, 2024

Disposition: Overruled

Order: Civil Minute Order

The hearing on the trustee's objection to confirmation was continued to allow the parties to meet and confer and to augment the evidentiary record.

CHAPTER 13 PLAN CONFIRMATION

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

The trustee objected to confirmation contending: (1) that the debtors had not obtained an order valuing the collateral of creditor, Onemain Financial Group; and (2) that the proposed payment to Onemain Financial contravened Fed. R. Bankr. P. 3010, as it provided for a monthly payment of less than \$15.00.

On January 19, 2024, the court granted the debtor's motion to value the collateral of Onemain Financial Group. Order, ECF No. 33.

On February 5, 2024, the debtors and the Chapter 13 trustee filed a joint status report. Status Report, ECF No. 34. In the report the parties state that they have agreed that the following language will be added to the order confirming the plan:

Section 3.08 - While the plan calls for a monthly dividend to Onemain of \$9.38, pursuant to FRBP 3010(b) the Trustee need not issue checks until the dividend reaches at least \$15 or the payment is the final payment of the claim.

Status Report, 2:1-4, ECF No. 34.

Accordingly, the court approves the proposed language in the order confirming the plan and will overrule the trustee's objection to confirmation. The debtors shall submit an order

confirming the plan consistent with the court's ruling and which has been approved by the Chapter 13 trustee.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the objection is overruled. The debtors shall submit an order confirming the plan consistent with the court's ruling and which has been approved by the Chapter 13 trustee.

21. [23-23130](#)-A-13 **IN RE: PAUL-MATTHEW FERNANDES**
[DPC-1](#)

CONTINUED MOTION TO DISMISS CASE
12-21-2023 [33]

THOMAS AMBERG/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

Notice: Continued from January 30, 2024

Disposition: Withdrawn by moving party

Order: Civil minute order

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(6) as the debtor has failed to make all payments due under the confirmed plan.

The debtor filed a timely opposition, and the hearing was continued for additional evidence.

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

The trustee filed a status report as ordered, ECF No. 58. In the report the trustee requests to dismiss his motion under Fed. R. Civ. P. 41; Fed. R. Bankr. P. 9014, 7041.

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

appeared." Fed. R. Civ. P. 41(a)(1)(A). In all other instances, a motion or objection may be withdrawn "only by court order, on terms that the court considers proper." Fed. R. Civ. P. 41(a)(2).

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

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the motion to dismiss is withdrawn.

22. [23-20831](#)-A-13 **IN RE: ELIZABETH RODAS BARRIOS**
[DPC-2](#)

MOTION TO DISMISS CASE
1-29-2024 [[52](#)]

GARY FRALEY/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: February 13, 2024

Opposition Filed: Unopposed

Cause: 11 U.S.C. § 1307(c)(1) - Plan Delinquency; failure to file amended plan

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the chapter 13 plan. For the reasons

stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. Payments under the plan are delinquent in the amount of \$1,898.18 with payment(s) of \$1,897.38 due prior to the hearing on this motion.

The trustee also moves to dismiss the case as the debtor has failed to file an amended plan after the court denied confirmation of the debtor's previously proposed Chapter 13 Plan on December 19, 2023.

11 U.S.C. § 1307(c)

Except as provided in subsection (f) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including—

...

11 U.S.C. § 1307(c).

The court finds that dismissal is in the best interests of the creditors and the estate. This case has not been previously converted from a chapter 7.

CIVIL MINUTE ORDER

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

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

The trustee's motion to dismiss this chapter 13 case has been presented to the court. Having entered the default of respondent debtor for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted because of the delinquency under the chapter 13 plan, and the debtor's failure to file an amended plan in this case. The court hereby dismisses this case.

23. [23-23531](#)-A-13 **IN RE: DIEGO MUNOZ-ROCHA**
[AB-1](#)

MOTION TO CONFIRM PLAN
1-5-2024 [\[27\]](#)

AUGUST BULLOCK/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: Granted

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).

FACTS

The First Amended Chapter 13 plan calls for payments of \$126 per month for a period of 39 months. First Amended Chapter 13 Plan, ECF No. 32. The plan is projected to pay attorney compensation in the amount of \$4,110.00 and 1% to unsecured creditors totaling approximately \$35,092.00. *Id.* The debtor acknowledges that he has no secured or priority obligations. Declaration of Debtor, 2:4-6, ECF No. 30.

Although LBR 2016-1(c) (1) (A) authorizes counsel to charge \$8,500.00 for representation of the debtor during the pendency of this case, counsel has opted instead to reduce his compensation to \$5,000.00. Disclosure of Compensation, ECF No. 1. Compensation in the amount of \$4,110.00 is scheduled to be paid through the plan in monthly payments of \$126.00. The debtor and his attorney executed and filed a Rights and Responsibilities form, ECF No. 8. The attorney is obligated to represent the debtor for the duration of the 39-month plan and until discharge is entered, and the case closed.

In the Statement of Financial Affairs, the debtor discloses the following transaction prior to filing the case:

Debtor's mother purchased 191 Mooney Court in Corning on 9/19/2018. Debtor was included in the title solely to allow his mother to qualify for a mortgage. His mother lived in the house, made all the payments, and

included the mortgage in her taxes. Debtor never made any of the mortgage or tax payments. Accordingly, Debtor did not own any interest in 191 Mooney Court at any time. The mother sold the house on October 28, 2022, and moved to Mexico.

Statement of Financial Affairs, No. 18, ECF No. 1.

GOOD FAITH

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

Th Chapter 13 trustee contends the plan is not proposed in good faith and the petition is not filed in good faith. 11 U.S.C. § 1325(a)(3), (7), as follows:

The Trustee questions why the Debtor wants to be in a Chapter 13 case for almost 50 months when he does not have any secured debt, (DN 1, Page 19), has minimal assets listed on Schedule A/B, (DN 1, Pages 11-16), all of which are completely exempted on Schedule C, (DN 1, Pages 17-18), has no priority debt, no lawsuits or wage garnishments pending, the Debtor was not employed at the time of filing this case, and was below the median income. (F122C, DN 1, Pages 39-42). It also appears that the Debtor has not filed, or received a discharge, from any Chapter 7 cases in the last 8 years, so he appears to be eligible for a Chapter 7 discharge. Other than to pay the Attorney's fees in an exorbitantly higher amount (in comparison to a Chapter 7), there does not seem to be a strategic or practical reason for the Debtor to have filed a Chapter 13 bankruptcy instead of a Chapter 7 bankruptcy.

Opposition, 2:4-15, ECF No. 40.

The debtor states that "[a]fter considering my options and consulting with my attorney, August Bullock, I decided that a Chapter 13 bankruptcy petition was the best way to resolve the interests of all concerned." Declaration of Debtor, 1:27-28, 2:1, ECF No. 30.

There are many factors which a debtor might consider when deciding to file a Chapter 13 case instead of a Chapter 7. These include but are not limited to: (1) the type of discharge the debtor would receive; (2) whether assets will be liquidated; (3) the risk of litigating claims of preferential payments or fraudulent transfers; (4) the debtor's desire to pay creditors; or (5) the debtor's ability to dismiss the proceeding. Each of these factors and many others are

legitimately considered when a debtor decides which type of bankruptcy to file.

The trustee has averred no facts which indicate that the debtor has failed to provide any requested information, has made inaccurate statements in the bankruptcy schedules or statements, or that the debtor is otherwise unaware of the consequences of which the trustee complains in his argument.

Moreover, it is not the prerogative of the Chapter 13 trustee to require the debtor to disclose the content of his discussions with bankruptcy counsel to justify his decision to file a Chapter 13 case. The relationship between the debtor and his attorney is privileged and the court, absent evidence which shows the attorney has failed to adequately represent the debtor, will not interfere with this relationship.

The court finds that the plan is proposed in good faith, and that the petition is filed in good faith. Additionally, the court finds the attorney fees of \$5,000 to be reasonable given the attorney's agreement to represent the debtor for the duration of the 39-month plan.

ATTORNEY COMPENSATION - MONTHLY DIVIDEND

The trustee also contends that the monthly payment of \$126 contravenes LBR 2016-1(c)(4)(B) which requires that compensation payments be paid in equal monthly installments, and amortized over the entire term of the plan. The trustee contends that the correct payment amortized over 39 months is \$105.38 per month, and proposes that this may be corrected in the order confirming the plan.

The court agrees with the trustee. The order confirming the plan shall provide that attorney compensation payments shall be \$105.38 per month.

The debtor filed a reply to the trustee's opposition. In his reply the debtor states "Debtor does not oppose the minor modification referenced in the Trustee's Objection." Reply, 4:2, ECF No. 43.

The court will grant the motion.

CIVIL MINUTE ORDER

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

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

The 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 granted. The debtor shall submit an order confirming the plan which is consistent with this ruling, and which has been approved by the Chapter 13 trustee.

24. [22-20532](#)-A-13 **IN RE: KELLI SIMPSON**
[DPC-3](#)

CONTINUED MOTION TO DISMISS CASE
12-20-2023 [[89](#)]

CHAD JOHNSON/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case
Notice: Continued from January 17, 2024
Disposition: Withdrawn by moving party
Order: Civil minute order

The hearing on the Chapter 13 trustee's motion to dismiss was continued for the parties meet and confer and then augment the evidentiary record, after the debtor opposed the motion.

JOINT STATUS REPORT – Fed. R. Civ. P. 41

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).

The parties filed a joint status report on February 5, 2024. Status Report, ECF No. 102. In the status report the parties agree that the trustee has received funds sufficient to bring plan payments current. *Id.* The parties request that the motion be dismissed.

No unfair prejudice will result from withdrawal of the motion and the court will accede to the 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 is withdrawn.

25. [22-22232](#)-A-13 **IN RE: DUANE OTT**
[DPC-3](#)

CONTINUED MOTION TO DISMISS CASE
1-10-2024 [\[87\]](#)

MARC VOISENAT/ATTY. FOR DBT.

Tentative Ruling

Motion: Dismiss Case

Notice: Continued from February 13, 2024

Disposition: Granted

Order: Civil minute order

Cause: 11 U.S.C. § 1307(c)(1) - Plan Delinquency; failure to file plan

Best Interests of Creditors/Estate: Convert to Chapter 7

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) as the debtor has failed to make all payments due under the plan. The trustee contends that the plan payments are delinquent in the amount of \$3,755.54, with 2 payment(s) of \$3,755.54 due prior to the hearing on this motion.

The trustee also moves to dismiss the case because the debtor has failed to file an amended plan after the court denied confirmation of the most recently filed plan on November 21, 2023.

The debtor filed an amended plan. The court denied confirmation of the amended plan because payments under the plan were delinquent. The debtor also filed opposition to this motion however the opposition was not supported by any evidence. Opposition, ECF No. 96. The court gives no weight to opposition which is unsupported by evidence.

STATUS REPORT

On February 15, 2024, the trustee filed a status report, ECF No. 103. The trustee states that no plan payments were tendered in January 2024, as required and that plan payments are delinquent in the amount of \$7,511.08.

11 U.S.C. § 1307(c)

Except as provided in subsection (f) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including—

...

11 U.S.C. § 1307(c).

The Chapter 13 trustee seeks dismissal of the case but fails to state how dismissal of the case is in the best interests of the creditors and the estate under § 1307(c). The trustee reports that there are approximately \$296,283.94 in non-exempt assets. The court has reviewed the debtor's schedules and finds that the non-exempt assets consist of non-exempt equity in the debtor's residence; and \$22,886.69 in an inheritance. The court finds that conversion is in the best interests of the creditors and the estate.

The Chapter 13 trustee shall be prepared to support his request for dismissal at the hearing on the motion. Argument should focus on why dismissal is in the best interests of the creditors and the estate. Going forward the trustee shall include the following information in his analysis in motions to dismiss: (1) identification of all nonexempt assets with value; and (2) amount of exemption, if any, claimed in the listed assets.

CIVIL MINUTE ORDER

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

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

The trustee's motion to dismiss has been presented to the court. Having considered the motion, the opposition, responses, and oral argument at the hearing, if any, and good cause appearing,

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the chapter 13 plan in this case. Delinquency constitutes cause to convert this case. 11 U.S.C. § 1307(c)(1). The court hereby converts this case.

26. [22-22232](#)-A-13 **IN RE: DUANE OTT**
[MEV-6](#)

MOTION TO CONFIRM PLAN
1-11-2024 [\[91\]](#)

MARC VOISENAT/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).

PLAN FEASIBILITY

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

Plan Delinquency

The trustee indicates that the plan payments are delinquent in the amount of \$7,511.08 with another payment of \$3,755.54 due prior to the hearing on this motion. The plan cannot be confirmed if the plan payments are not current.

Schedules I and J

The debtor has not supported the plan by filing recently amended Schedules I and J. The most recently filed budget schedules were filed on June 16, 2023, nearly 7 months ago, ECF No. 62. Without current income and expense information the court and the chapter 13 trustee are unable to determine whether the plan is feasible or whether the plan has been proposed in good faith. See 11 U.S.C. § 1325(a) (3), (6).

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.

27. [23-24537](#)-A-13 **IN RE: GEORGINA TAMPLEN**
[AID-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY AE HGF LIQUIDITY FUND,
LLC
1-25-2024 [\[25\]](#)

MARY TERRANELLA/ATTY. FOR DBT.
ANTHONY DANIELSON/ATTY. FOR MV.

Final Ruling

Objection: Creditor's Objection to Confirmation of Plan

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

Disposition: Overruled as moot

Order: Civil minute order

AE HGF Liquidity Fund objects to confirmation of the debtor's plan. The court has sustained the Chapter 13 trustee's objection to confirmation (DPC-1). Accordingly, this objection will be overruled as moot.

The court notes that the objecting creditor failed to file a certificate of service showing that its objection was served on all required parties under Fed. R. Bankr. P. 9013, LBR 3015-1, 9014-1. As such the court would have overruled the objection for failure to prove compliance with the service requirements stated in this ruling.

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.

AE HGF Liquidity Fund'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 as moot.

28. [23-24537](#)-A-13 **IN RE: GEORGINA TAMPLEN**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
1-23-2024 [\[19\]](#)

MARY TERRANELLA/ATTY. FOR DBT.

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

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

ORAL ARGUMENT

The issues in this matter having been sufficiently briefed by the trustee, the court finds that the matter does not require oral argument. LBR 9014-1(h); *Morrow v. Topping*, 437 F.2d 1155, 1156 (9th Cir. 1971) (approving local rules that authorize disposition without oral argument). Further, no evidentiary hearing is necessary for resolution of material, factual issues.

FAILURE TO FILE TAX RETURNS

Together 11 U.S.C. §§ 1308 and 1325(a) (9) prohibit confirmation of a chapter 13 plan if the debtor has not filed all tax returns due during the 4-year period prior to the filing of the petition.

The court may not confirm a plan unless "the debtor has filed all applicable Federal, State, and local tax returns as required by section 1308." 11 U.S.C. § 1325(a) (9).

(a) Not later than the day before the date on which the meeting of the creditors is first scheduled to be held under section 341(a), if the debtor was required to file a tax return under applicable nonbankruptcy law, the debtor shall file with appropriate tax authorities all tax returns for all taxable periods ending during the 4-year period ending on the date of the filing of the petition.

11 U.S.C. § 1308(a).

If the debtor has not filed all required tax returns, then the plan may not be confirmed as this contravenes the provisions of 11 U.S.C. §§ 1325(a)(9) and 1308. The debtor testified at the meeting of creditors that she has not filed tax returns for approximately 10 years. The trustee also indicates that the 341 meeting has been continued to allow the debtor to file tax returns.

The court finds that the failure to file tax returns is dispositive regarding the confirmation of the debtor's plan. The court will sustain the objection and need not reach the remaining issues raised in the trustee's objection.

CIVIL MINUTE ORDER

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

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

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

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

29. [23-24537](#)-A-13 **IN RE: GEORGINA TAMPLEN**
[MET-1](#)

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

MARY TERRANELLA/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption in Real Property

Notice: Written opposition filed by responding party

Disposition: Continued to April 23, 2024, at 9:00 a.m.

Order: Civil minute order

The motion seeks to avoid the responding party's lien on the moving party's real property. The court will continue the hearing to allow the parties to augment the evidentiary record.

LIEN AVOIDANCE

Judicial Lien

Under the Bankruptcy Code, a "judicial lien" is a "lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding." 11 U.S.C. § 101(36). A lien is a "charge against or interest in property to secure payment of a debt or performance of an obligation." *Id.* § 101(37).

Avoidance

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

Valuation of Property

In applying the statutory-impairment formula of section 522(f)(2)(A), the court must determine the value of the debtor's interest in property in the absence of liens. See 11 U.S.C. § 522(f)(2)(A). Section 522 explicitly refers to the petition date as the operative date for determining the value of the debtor's property unless the property became property of the estate after the petition date. See *id.* § 522(a).

Use of the petition date to determine the value of the property, as well all other rights relating to lien avoidance under § 522(f)(2)(A), is supported by case law in this circuit.

"Under the so-called 'snapshot' rule, bankruptcy exemptions are fixed at the time of the bankruptcy petition." *Wolfe v. Jacobson (In re Jacobson)*, 676 F.3d 1193, 1199 (9th Cir. 2012) (citing *White v. Stump*, 266 U.S. 310, 313, 45 S.Ct. 103 (1924)). In determining the scope or validity of an exemption claimed under state law, the court applies state law in effect on the petition date. 11 U.S.C. § 522(b)(3)(A); *Wolfe*, 676 F.3d at 1199. The bankruptcy appellate panel has also indicated that the focus in determining exemption rights should be "the petition date, not the current date." *Mbaba v. Clark Fergus & Assocs. (In re Mbaba)*, No. CC-05-1401-PaBK, 2006 WL 6810948, at *5 (B.A.P. 9th Cir. Aug. 15, 2006).

The bankruptcy appellate panel has held:

[T]he well-established rule [is] that the critical date for determining exemption rights is the petition date. "[E]xemptions . . . are determined on the date of bankruptcy and without reference to subsequent changes in the character or value of the exempt property[.]" A debtor's § 522(f) lien avoidance rights are also determined as of the petition date. "Because lien avoidance is part and parcel of the exemption scheme, the right to avoid a judicial lien must also be determined as of the petition date."

Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 391-92 (B.A.P. 9th Cir. 2003) (third, fourth, and fifth alterations in original) (citations omitted) (quoting *Culver, LLC v. Chiu (In re Chiu)*, 266 B.R. 743, 751 (B.A.P. 9th Cir. 2001), *aff'd*, 304 F.3d 905 (9th Cir. 2002)).

Thus, "[i]t is well settled that the petition date is the operative date to value the debtor's residence and the homestead [exemption] for section 522(f) purposes." *Mbaba*, 2006 WL 6810948, at *5 (citing *In re Salanoa*, 263 B.R. 120, 124 (Bankr. S.D. Cal. 2001); *BFP v. Resolution Trust Corp.*, 511 U.S. 531, 537 (1994)). "This approach is consistent with *Dewsnup* because it allows a lien creditor to enjoy the increase in value if the lien is not avoided. However, it also preserves the parties' rights as they existed on the petition date to the extent the lien is avoidable under § 522(f)." *Salanoa*, 263 B.R. at 124. It is also consistent with Ninth Circuit precedent that allows a debtor to avoid a lien under § 522(f) even when the debtor "[no longer has] an interest in the property at the time it moves to avoid." *Chiu*, 304 F.3d at 908.

Opposition

Creditors Erika and Vidal Ceja have filed opposition to the motion. Opposition, ECF No. 23. The opposition primarily focuses on matters which do not apply to the issue of judicial lien avoidance under 11 U.S.C. § 522(f) as discussed above in this ruling. However, the creditors have requested time to retain counsel to oppose the motion.

While it is possible the creditors also intend to object to confirmation of the plan or possibly contest the dischargeability of the debt owed to them these issues are not before the court at this time. The court has already sustained the trustee's objection to confirmation. To dispute the dischargeability of the debt owed to them the creditors must file a complaint objecting to the dischargeability of the obligation no later than March 18, 2024. See Notice of Chapter 13 Bankruptcy Case Meeting of Creditors and Deadlines Due to COVID-19 Outbreak, Items 8, 13, ECF No. 9.

The court will continue the hearing on the debtor's motion to avoid judicial lien to allow the opposing creditors to consult with counsel and to file and serve evidence and argument. The debtor may also file and serve a reply.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the motion is continued to April 23, 2024, at 9:00 a.m. No later than March 26, 2024, the opposing creditors shall file and serve a written opposition to the motion; the opposition shall specifically address each issue raised in the debtor's motion to avoid judicial lien, and include admissible evidence in support of the creditor's position.

IT IS FURTHER ORDERED that the debtor(s) file a reply, if any, no later than April 9, 2024. The evidentiary record will close after April 9, 2024.

30. [22-23240](#)-A-13 **IN RE: PATRICK/RAMONA HARRISON**
[WLG-1](#)

MOTION TO MODIFY PLAN
1-16-2024 [\[21\]](#)

NICHOLAS WAJDA/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

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

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

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 \$532.02. The plan cannot be confirmed if the plan payments are not current.

GOOD FAITH

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

The proposed plan reduces the percentage to unsecured creditors from 100% to approximately 73%, and reduces the plan payment by \$792.00 each month.

The trustee opposes the motion as the debtors' income is unclear from the amended Schedules I and J in support of the motion and because the debtors propose additional expenses the need for which have not been substantiated.

Support for Parent

Schedule I shows a new expense for the debtor's mother in the monthly amount of \$1,000.00. The debtors' declaration hints at difficulties which have arisen because of the death of a family member, but does not explain the new expense and the need for \$1,000.00 per month paid to the debtor's mother. The court notes that one parent (mother) already resides with the debtors. It is unclear if the support paid is for expenses on behalf of the parent residing with the debtors or a different parent. The declaration states "[w]e have also had familial issues stemming from the loss of a parent that have caused major psychological stress and has hindered our ability to maintain consistent employment." Declaration, 2:4-6, ECF No. 24.

Additional Income

Schedule I states "Debtor 2 currently works with Turbo Tax during the tax season. She may be offered full time employment, but it is unknown at this time." Schedule I, No. 13, ECF No. 28. No income from Turbo Tax is indicated in the Schedule. There is no evidence in the declaration which explains the statement contained in the schedule. The court cannot determine if income has been omitted from the schedule. Given that tax returns are typically due by mid-April of each year it appears plausible that the debtor is currently receiving income from Turbo Tax. The debtors have failed to file sufficient evidence to allow the court to determine the plan is proposed in good faith.

It is the debtors' burden to prove that the plan is proposed in good faith. Explanations for changes to expenses, and complete information regarding the debtors' projected income is required at the outset of the motion as this is part of the debtors' prima facie case for plan modification. The court finds that the debtors have failed to prove their plan is proposed in good faith under 11 U.S.C. § 1325(a)(3) and will deny the motion to modify.

DEBTOR REPLY

On February 23, 2024, the debtors filed a declaration and Amended Schedules I and J, ECF No. 34, 30.

The documents are untimely, as the deadline to file a reply was February 20, 2024. The court gives no weight to late filed evidence. Moreover, as the court has stated previously in this ruling updated and accurate budget schedules and a declaration sufficiently explaining the changes to the debtors' budget in support of the plan is part of the debtors' prima facie case for confirmation and must be filed at the outset of the motion and not in response to the trustee's opposition.

CIVIL MINUTE ORDER

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

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

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

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

31. [23-20040](#)-A-13 **IN RE: YAROSLAV TKACHUK**
[YK-3](#)

OBJECTION TO CLAIM OF MERRICK BANK, CLAIM NUMBER 1
12-4-2023 [\[59\]](#)

YAROSLAV TKACHUK/ATTY. FOR MV.
RESPONSIVE PLEADING

Final Ruling

Objection: Objection to Claim

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

Disposition: Overruled without prejudice

Order: Civil minute order

The debtor, objects to the allowance of Merrick Bank, Claim No. 1. The court will overrule the objection without prejudice for the reasons discussed.

SERVICE INSUFFICIENT

Fed. R. Bankr. P. 3007

Rule 3007 governs service of claim objections. It provides: "The objection and notice shall be served on a claimant by first-class mail to the person most recently designated on the claimant's original or amended proof of claim as the person to receive notices, at the address so indicated[.]" Fed. R. Bankr. P. 3007.

Rule 3007 requires Rule 7004(h) service on an FDIC-insured institution. The rule provides that "if the objection is to a claim of an insured depository institution," service shall be made "in the manner provided by Rule 7004(h).

Because the claimant is a bank, service must also include service under Fed. R. Bankr. P. 7004(h).

Fed. R. Bankr. P. 7004(h)

As a contested matter, the objection must also be served in the manner provided by Rule Service on FDIC-insured institutions must be made "by certified mail addressed to an officer of the institution" unless one of the exceptions applies. Fed. R. Bankr. P. 7004(h).

The motion was not sent by certified mail or was not addressed to an officer of the institution. Nothing indicates that the exceptions in Rule 7004(h) are applicable.

CIVIL MINUTE ORDER

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

The debtor's claim objection has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling, IT IS ORDERED that the objection is overruled without prejudice.

32. [24-20344](#)-A-13 **IN RE: RANDY HOWARD**
[PGM-1](#)

MOTION TO EXTEND AUTOMATIC STAY
2-12-2024 [[11](#)]

PETER MACALUSO/ATTY. FOR DBT.

Tentative Ruling

Motion: Extend the Automatic Stay
Notice: LBR 9014-1(f)(2); no written opposition required
Disposition: Granted
Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

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

EXTENSION OF THE STAY

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

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

CIVIL MINUTE ORDER

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

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

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

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

33. [22-22749](#)-A-13 **IN RE: MICHAEL WYCLIFFE AND REBECCA WEAVER**
[PGM-2](#)

MOTION TO MODIFY PLAN
1-18-2024 [\[41\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Continued to March 26, 2024, at 9:00 a.m.

Order: Civil minute order

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

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

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 \$780.00. The plan cannot be confirmed if the plan payments are not current.

MATHEMATICAL FEASIBILITY

The trustee opposes confirmation of the plan contending the plan is not mathematically feasible. The trustee calculates that the plan will take approximately 67 months to fund as proposed.

The plan does not provide for payments to the trustee in an amount necessary for the execution of the plan. See 11 U.S.C. § 1322(a)(1). The court cannot confirm a plan with a period longer than 60 months. See 11 U.S.C. § 1322(d).

DEBTOR REPLY AND AMENDED SCHEDULES

On February 20, 2024, the debtors filed a reply to the trustee's opposition. The reply is supported by declarations of the debtors and amended Schedules I and J.

The reply contends that: (1) plan payments are current; (2) the overextension of the plan term may be cured by a monthly increase of \$36.50 in the plan payment; and (3) the debtors can support the increased plan payment and have filed amended Schedules I and J in support of this.

The court will continue the hearing to allow the Chapter 13 trustee to review the amended schedules, and to file a status report. The court intends to rule on this matter without further notice or hearing.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the debtors' motion to modify the plan will be continued to March 26, 2024, at 9:00 a.m. No later than March 12, 2024, the trustee shall file a status report apprising the court of the status of the payments under the proposed plan, and whether the increase in plan payments resolves the overextension of the plan term.

IT IS FURTHER ORDERED that the evidentiary record will close after March 26, 2024. The debtors may not file further evidence or argument in support of this motion without leave of court.

34. [22-23253](#)-A-13 **IN RE: LINDSAY HARRIS**
[MET-6](#)

MOTION TO EMPLOY REMAX GOLD AS REALTOR(S)
1-29-2024 [[174](#)]

MARY TERRANELLA/ATTY. FOR DBT.

No Ruling

35. [23-24154](#)-A-13 **IN RE: WANMUENG WADKHIAN**
[ALG-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-24-2024 [[37](#)]

MATTHEW DECAMINADA/ATTY. FOR DBT.
ARNOLD GRAFF/ATTY. FOR MV.
FLOYD E. CARLSON, TRUSTEE OF THE CARLSON FAMILY TRUST VS.
RESPONSIVE PLEADING

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 1014 Erdman Way, Sacramento, California

Cause: Prepetition delinquency 18 months/\$\$1,562.50 per month
Post petition delinquency 2 months/\$3,125.00

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

Floyd E. Carlton, Trustee of the Carlson Family Trust dated March 27, 2012, seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a).

STAY RELIEF

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

The Chapter 13 trustee reports that plan payments are delinquent. Response, ECF No. 48. The debtor has failed to make any plan payments to the trustee. The movant is provided for in Class 2 of the Chapter 13 Plan. This case was filed on November 20, 2023. Therefore, two plan payments have come due and the trustee has received none.

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.

SECTION 362(d)(4)

Section 362(d)(4) authorizes binding, in rem relief from stay with respect to real property “if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either–(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or (B) multiple bankruptcy filings affecting such real property.” 11 U.S.C. § 362(d)(4).

The B.A.P. has specified the elements for relief under this subsection of § 362. “To obtain relief under § 362(d)(4), the court must find three elements to be present. [1] First, debtor’s bankruptcy filing must have been part of a scheme. [2] Second, the object of the scheme must be to delay, hinder, or defraud creditors. [3] Third, the scheme must involve either (a) the transfer of some interest in the real property without the secured creditor’s consent or court approval, or (b) multiple bankruptcy filings affecting the property.” *In re First Yorkshire Holdings, Inc.*, 470 B.R. 864, 870–71 (B.A.P. 9th Cir. 2012) (footnote omitted). [4] Fourth, the movant creditor must be a creditor whose claim is secured by real property. *In re Ellis*, 523 B.R. 673, 678 (B.A.P. 9th Cir. 2014) (“Applying its plain meaning, this provision of the Code authorizes a bankruptcy court to grant the extraordinary remedy of in rem stay relief only upon the request of a creditor whose claim is secured by an interest in the subject property.”).

APPLICATION

The movant also seeks in rem relief under 11 U.S.C. § 362(d)(4) contending that multiple bankruptcy filings warrant the relief. In addition to the instant case the debtor has filed one previous bankruptcy case, a Chapter 13 case filed February 17, 2023, and dismissed on November 1, 2023. Absent additional evidence the court finds that filing two Chapter 13 bankruptcies is not sufficient to award in rem relief. The request for in rem relief is denied.

CIVIL MINUTE ORDER

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

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

Floyd E. Carlton, Trustee of the Carlson Family Trust dated March 27, 2012'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 1014 Erdman Way, Sacramento, California, 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.

36. [23-24455](#)-A-13 **IN RE: GLENN WATKINS**
[DPC-1](#)

MOTION TO DISMISS CASE
1-23-2024 [\[16\]](#)

Final Ruling

This case was dismissed on February 14, 2024. Accordingly, this motion will be removed from the calendar as moot. No appearances are required.

37. [23-24455](#)-A-13 **IN RE: GLENN WATKINS**
[DPC-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
1-23-2024 [\[20\]](#)

Final Ruling

This case was dismissed on February 14, 2024. Accordingly, the objection will be removed from the calendar as moot. No appearances are required.

38. [23-24057](#)-A-13 **IN RE: ALSESTER COLEMAN**
[AIN-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY PLATINUM LOAN
SERVICING, INC
12-21-2023 [[33](#)]

PETER MACALUSO/ATTY. FOR DBT.
ALAN NAHMIAS/ATTY. FOR MV.
DEBTOR NON-OPPOSITION

Final Ruling

Objection: Creditor's Objection to Confirmation of Plan

Notice: Continued from January 17, 2024

Disposition: Sustained and confirmation denied

Order: Civil minute order

The hearing on the creditor's objection to confirmation was continued to allow the parties to augment the evidentiary record.

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

The debtor has filed a non-opposition to the objection. Non-opposition, ECF No. 55. Accordingly, the court will sustain the objection on the grounds stated therein.

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.

Platinum Loan Servicing, Inc.'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.

39. [23-24057](#)-A-13 **IN RE: ALSESTER COLEMAN**
[AIN-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-13-2024 [[62](#)]

PETER MACALUSO/ATTY. FOR DBT.
ALAN NAHMIAS/ATTY. FOR MV.
PLATINUM LOAN SERVICING, INC. VS.

No Ruling

40. [23-24057](#)-A-13 **IN RE: ALSESTER COLEMAN**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P
CUSICK
12-20-2023 [[28](#)]

PETER MACALUSO/ATTY. FOR DBT.
DEBTOR NON-OPPOSITION

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan
Notice: Continued from January 17, 2024
Disposition: Sustained and confirmation denied
Order: Civil minute order

The hearing on the Chapter 13 trustee's objection to confirmation was continued to allow the parties to augment the evidentiary record.

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

The debtor has filed a non-opposition to the objection. Non-opposition, ECF No. 53. Accordingly, the court will sustain the objection on the grounds stated therein.

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.

41. [23-23663](#)-A-13 **IN RE: VALERIE WILLIAMS**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.
CUSICK
12-6-2023 [[16](#)]

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

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: Continued from January 3, 2024

Disposition: Sustained and confirmation denied

Order: Civil minute order

The hearing on the Chapter 13 trustee's objection to confirmation was continued to allow the parties to augment the evidentiary record.

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

The debtor has filed a non-opposition to the objection, stating her intention to file an amended plan. Non-opposition, ECF No. 31. Accordingly, the court will sustain the objection on the grounds stated therein.

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.

42. [23-23664](#)-A-13 **IN RE: JEFFREY/LAURIE SWENSON**
[DPC-2](#)

MOTION TO DISMISS CASE
1-19-2024 [[65](#)]

GARY FRALEY/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: February 13, 2024

Opposition Filed: February 13, 2024 - timely

Cause: 11 U.S.C. § 1307(c)(1) - Plan Delinquency; failure to file amended plan

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) as the debtor has failed to make all payments due under the plan. The trustee contends that the plan payments are delinquent in the amount of \$8,725.78, with one payment(s) of \$4,362.89 due prior to the hearing on this motion.

The trustee also seeks dismissal because the debtors have failed to file an amended Chapter 13 Plan after the court denied confirmation of the most recently filed plan on December 19, 2023. This case was filed on October 16, 2023, and the trustee reports that the debtors have made no plan payments since the inception of the case.

LBR 9014-1(f)(1)(B)

Opposition. Opposition, if any, to the granting of the motion shall be in writing and shall be served and filed with the Court by the responding party at least fourteen (14) days preceding the date or continued date of the hearing. *Opposition shall be accompanied by evidence establishing its factual allegations.* Without good cause, no party shall be heard in opposition to a motion at oral argument if written opposition to the motion has not been timely filed. Failure of the responding party to timely file written opposition may be deemed a waiver of any opposition to the granting of the motion or may result in the imposition of sanctions.

LBR 9014-1(f)(1)(B) (emphasis added).

The debtor has filed a timely opposition, ECF No. 65. The opposition consists of an unsworn statement by debtors' counsel and is accompanied by no admissible evidence. The opposition states that the debtors will file an amended plan and a motion to confirm the plan before the date of the hearing on the motion. The opposition argues that the delay in filing a plan was because the debtors were seeking a loan modification.

The opposition does not comply with LBR 9014-1(f)(1)(B). A declaration is required to prove the contentions in the opposition and to provide additional relevant information. For example, there is no evidence indicating that the debtors have applied for a loan modification or their intention to file an amended plan.

The debtor's opposition does not fully resolve the grounds for dismissal. A delinquency still exists as of the date of the opposition. A statement of intent to take action in the future is not equivalent to cure of the delinquency. The court is unable to deny the motion given the outstanding delinquency.

The court gives no weight to an opposition which fails to provide sworn testimony by the party opposing the motion. Unsworn statements by counsel are not evidence and will not be considered.

UNTIMELY OPPOSITION - MOTION TO MODIFY

Opposition to a motion noticed under LBR 9014-1(f)(1) is due 14 days prior to the hearing. LBR 9014-1(f)(1)(B). Since this opposition is late, the court gives it no weight.

On February 13, 2024, the debtors filed an opposition to the motion to dismiss, ECF No. 65. The opposition consists of a statement by the debtor(s)' attorney stating his intention to file a modified plan by the date of the hearing on this motion. The opposition does not resolve the motion to dismiss as the plan payments are still delinquent on the date of the opposition. A statement indicating that the debtor(s) will take future action to resolve the delinquency is not a resolution of the motion to dismiss.

An amended plan has not yet been filed. Opposition to a motion noticed under LBR 9014-1(f)(1) is due 14 days prior to the hearing. LBR 9014-1(f)(1)(B). An amended plan in opposition to a motion to dismiss is due by the date opposition is due. Since this opposition--albeit of the de facto variety--is late, it will not be considered in ruling on the motion to dismiss.

The court is aware that the motion to dismiss was filed January 19, 2024, giving the debtors 39 days to resolve the grounds for dismissal or to file a motion to modify. To such an argument there are two responses. First, the Chapter 13 trustee's motion complies with the applicable provisions of national and local rules. Absent a different time specified by the rules or by court order, Rule 9006(d) allows any motion to be heard on 7 days notice. Local rules for the Eastern District Bankruptcy Court have enlarged that period

for fully noticed motions to 28 days. And the trustee has availed himself of that rule.

Second, and moreover, if the debtor believes that additional time to oppose the motion is required, even if by presentation of a modified plan, it is incumbent on the debtor prior to the date opposition to the motion is due to seek leave to file a late opposition, LBR 9014-1(f), or to seek a continuance of the hearing date on the motion to dismiss. Such a motion must include a showing of cause (including due diligence). LBR 9014-1(j). No such orders were sought here.

The opposition does not fully resolve the grounds for dismissal. A delinquency still exists as of the date of the opposition. A statement of intent to pay the delinquency on or before a future date is not equivalent to cure of the delinquency. The court is unable to deny the motion given the outstanding delinquency.

11 U.S.C. § 1307(c)

Except as provided in subsection (f) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including—

...

11 U.S.C. § 1307(c).

The court finds that dismissal is in the best interests of the creditors and the estate. This case has not been previously converted from a chapter 7. The court will dismiss the case.

CIVIL MINUTE ORDER

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

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

The trustee's motion to dismiss has been presented to the court. Having considered the motion, the opposition, responses, and oral argument at the hearing, if any, and good cause appearing,

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the chapter 13 plan in this case. Delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1). The court hereby dismisses this case.

43. [23-24064](#)-A-13 **IN RE: RICARDO CORTEZ**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.
CUSICK
12-20-2023 [[13](#)]

TIMOTHY WALSH/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: Continued from January 17, 2024

Disposition: Sustained and confirmation denied

Order: Civil minute order

The hearing on the trustee's objection to confirmation was continued to allow the parties to augment the record. Although it was not accompanied by any evidence, as ordered, the debtor filed a response, ECF No. 19. Although the response was filed early and failed to include any evidence the trustee prudently filed a reply, ECF No. 22.

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).

ATTORNEY COMPENSATION

The trustee objects to confirmation contending the attorney fees in the plan contravene the provisions of LBR 2016-1 because: (1) the attorney has accepted a retainer in excess of the percentage allowed under LBR 2016-1(c) (3); and (2) compensation is not amortized over the length of the plan in equal monthly payments as required by LBR 2016-1(c) (4) (B).

The Disclosure Statement filed at the inception of this case states that the attorney agreed to accept \$4,000.00 for his services; and that prior to the filing of the statement he received \$2,283.26. Disclosure Statement, ECF No. 1. A supplemental disclosure statement has not been filed. Fed. R. Bankr. P. 2016(b).

Attorney May Accept Lesser Retainer

Nothing in this subdivision shall preclude counsel for the debtor(s) from agreeing to accept a flat fee in a lesser amount, provided that the flat fee otherwise complies with subdivision (c) of this rule.
Notwithstanding an agreement to accept a lesser amount, the debtor(s) and counsel may agree in

writing, e.g., in the fee agreement or by post-petition stipulation, that circumstances warrant an increase in the flat fee up to the amount specified in subdivision (c)(1), as increased by subdivision (c)(7). In such event, debtor(s)' counsel shall submit an ex parte application, with notice to U.S. Trustee and to the Chapter 13 trustee, and an order increasing the fee to that amount.

LBR 2016-1(c)(1)(A)(i), (emphasis added).

Retainer May Not Exceed 25% of Total Compensation

Attorneys who claim fees under subdivision (c) shall not seek, nor accept, a retainer greater than the sum of (A) 25% of the fee specified in subdivision (c)(1), as increased by subdivision (c)(7); and (B) the amount of costs in subdivision (c)(2), as increased by subdivision (c)(7). Absent compliance with California Rule of Professional Conduct 1.15(b), any retainer received shall be deposited in the attorney's trust account.

LBR 2016-1(c)(3).

The disclosure statement reveals that debtor's counsel has agreed to accept a reduced amount of attorney compensation under LBR 2016-1(c)(3) which authorizes a flat fee of no more than \$8,500.00 in non-business cases. The attorney has agreed to accept \$4,000.00 in compensation.

However, the attorney is limited in the amount of retainer he may accept. The attorney cannot take a retainer greater than 25% of the lesser agreed upon amount. Thus, in this case the attorney may not accept a retainer more than \$1,000.00.

Payments Must Be Amortized Over Length of Plan

After confirmation of the debtor(s)' plan, the Chapter 13 trustee shall pay debtor(s)' counsel equal monthly installments over the term of the most recently confirmed Chapter 13 plan a sum equal to the flat fee prescribed by subdivision (c)(1) less any retainer received. Debtor(s)' counsel is enjoined from front-load payment of fees and/or costs.

LBR 2016-1(c)(4)(B).

The trustee contends that the \$200 per month payment for attorney compensation in the plan contravenes LBR 2016-1(c)(4)(B) which requires amortization of the attorney fees over the length of the plan. The trustee contends that the correct amount is \$28.62 per month.

DEBTOR REPLY

Debtor's counsel filed a reply on January 8, 2024. Reply, ECF No. 19. The reply, as the court has previously observed, is not accompanied by any admissible evidence, such as a declaration or written evidence from the debtor.

The reply states:

In response to trustee's objection, debtor will amend the Plan to provide for the attorney fee that corresponds with the General order, that is: the fee of \$8,500.00 (LOCAL RULE 2016-1 (c), (A), and the payment of the same pursuant to current LOCAL RULE 2016- 1(c) (3), and LOCAL RULE 2016-1 (c) (3), and (4), an initial payment of 25% of the attorney fee, which equals \$2,125.00, with further payments in the plan of \$100 per month for the balance of the 60 month plan.

Reply, 2:1-6, ECF No. 19.

It appears that counsel intends to file an amended plan.

For the reasons stated in this ruling the court finds that the proposed attorney fees do not comply with LBR 2016-1. Accordingly, the court will sustain the trustee's objection to confirmation.

UNTIMELY DECLARATION OF COUNSEL

On February 23, 2024, the debtor's counsel filed a declaration, ECF No. 24. The declaration is untimely filed as the deadline for replies was February 20, 2024. The court gives no weight to the late filed declaration.

The court notes that debtor's counsel has changed his mind and seeks the court's approval of the compensation as paid. As the court has stated previously in this ruling, while counsel may agree to a lesser amount, he may not collect a retainer more than 25% of the total amount agreed upon. To approve the existing agreement between the parties, counsel must file a motion to allow compensation under 11 U.S.C. § 329, 330.

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.

44. [20-22267](#)-A-13 **IN RE: KEVIN NORMAN**
[RDW-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-13-2024 [[224](#)]

MARY TERRANELLA/ATTY. FOR DBT.
REILLY WILKINSON/ATTY. FOR MV.
SUTTER COMMERCIAL CAPITAL INC. VS.

No Ruling

45. [23-23769](#)-A-13 **IN RE: JENNIFER KATZ**
[DPC-2](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.
CUSICK
12-13-2023 [[28](#)]

CATHERINE KING/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: Continued from January 17, 2024

Disposition: Sustained and confirmation denied

Order: Civil minute order

Attorney Catherine King is ordered to appear in this matter at 9:00 a.m. on February 27, 2024, in Department A. Appearance may be made by telephone or Zoom.

The hearing on the Chapter 13 trustee's objection to confirmation was continued from January 17, 2024, to allow the debtors to: 1) file a statement of non-opposition; 2) file opposition to the objection; or 3) file an amended Chapter 13 Plan.

DEBTORS FAILED TO RESPOND AS ORDERED

Failure of counsel or of a party to comply with these Rules, with the Federal Rules of Civil Procedure or the Federal Rules of Bankruptcy Procedure, or with any order of the Court may be grounds for imposition of any and all sanctions authorized by statute or rule or within the inherent power of the Court, including, without limitation, dismissal of any action, entry of default, finding of contempt, imposition of monetary

sanctions or attorneys' fees and costs, and other lesser sanctions.

LBR 1001-1(g).

On January 19, 2024, the court ordered:

IT IS ORDERED THAT the hearing on this objection will be continued to February 27, 2024, at 9:00 a.m.

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

(A) File a Statement of No Opposition. If the debtor(s) agree that the Chapter 13 trustee's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than January 30, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect...); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection not later than January 30, 2024; the response shall specifically address each issue raised in the trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than February 13, 2024. The evidentiary record will close after February 13, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the Chapter 13 trustee's objection by filing a modified plan, not later than January 30, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan; and

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

Order, ECF No. 34, (emphasis added).

The debtor failed to file: 1) any opposition to the trustee's objection; 2) an amended plan; or 3) a statement indicating that they do not intend to oppose the trustee's objection.

The failure to comply with the court's order further delays hearing on the trustee's objection, and has caused additional, unnecessary work for the court.

The court's ruling required the debtor to file a pleading in this matter by January 30, 2024. The debtor(s) has failed to file any document which would apprise the court of her position regarding the trustee's objection to confirmation.

Counsel for the debtor shall be prepared to address this issue at the hearing on this matter, and to inform the court whether the debtor(s) concedes the objection.

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 \$6,397.34, with two additional payments of \$6,397.34 due prior to the hearing on this matter. The plan cannot be confirmed if the plan payments are not current.

Failure to Provide Domestic Support Obligation Checklist

The debtor testified at the meeting of creditors that she is obligated to make monthly child support payments of \$55.00. Pursuant to 11 U.S.C. §§1302(b)(6) and (d)(1), the trustee is required to provide to the holder of a claim for a domestic support obligation written notice of such claim and of the right of such holder to use the services of the State child support enforcement agency established under the Social Security Act for the State in which such holder resides, for assistance in collecting child support during and after the case.

Local Bankruptcy Rule 3015-1(c)(2) requires the debtor to serve upon the trustee no later than fourteen (14) days after the filing of the petition a Domestic Support Obligation Checklist. The debtor has failed to provide the trustee the checklist.

Failure to List Correct Schedules

The trustee contends that information is missing from the debtor's Schedules and other documents filed in the case, including inherited real property which is not listed in Schedule A/B. The trustee requested that the debtor amend Schedule A/B to include this asset. To date, no amendment has been filed. The trustee cannot assess either the feasibility of the plan or accurately calculate the liquidation value of the estate without a complete listing and valuation of the debtor's assets. 11 U.S.C. § 1325(a)(4).

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.

46. [23-23769](#)-A-13 **IN RE: JENNIFER KATZ**
[JCW-1](#)

CONTINUED AMENDED OBJECTION TO CONFIRMATION OF PLAN BY U.S.
BANK NATIONAL ASSOCIATION
1-29-2024 [[39](#)]

CATHERINE KING/ATTY. FOR DBT.
JAVONNE PHILLIPS/ATTY. FOR MV.

Tentative Ruling

Objection: Creditor's Objection to Confirmation of Plan
Notice: Continued from January 17, 2024
Disposition: Sustained and confirmation denied
Order: Civil minute order

Attorney Catherine King is ordered to appear in this matter at 9:00 a.m. on February 27, 2024, in Department A. Appearance may be made by telephone or Zoom.

The hearing on U.S. Bank, National Association's objection to confirmation was continued from January 17, 2024, to allow the debtors to: 1) file a statement of non-opposition; 2) file opposition to the objection; or 3) file an amended Chapter 13 Plan.

DEBTORS FAILED TO RESPOND AS ORDERED

Failure of counsel or of a party to comply with these Rules, with the Federal Rules of Civil Procedure or the Federal Rules of Bankruptcy Procedure, or with any order of the Court may be grounds for imposition of any and all sanctions authorized by statute or rule or within the inherent power of the Court, including, without limitation, dismissal of any action, entry of default, finding of contempt, imposition of monetary sanctions or attorneys' fees and costs, and other lesser sanctions.

LBR 1001-1(g).

On January 19, 2024, the court ordered:

IT IS ORDERED THAT the hearing on this objection will be continued to February 27, 2024, at 9:00 a.m.

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

(A) File a Statement of No Opposition. If the debtor(s) agree that the creditor's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than January 30, 2024. L.R. 230(c) ("A responding party who has no

opposition to the granting of the motion shall serve and file a statement to that effect...); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the creditor's objection, the debtor(s) shall file and serve a written response to the objection not later than January 30, 2024; the response shall specifically address each issue raised in the creditor's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the objecting creditor shall file and serve a reply, if any, no later than February 13, 2024. The evidentiary record will close after February 13, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the creditor's objection by filing a modified plan, not later than January 30, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan; and

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

Order, ECF No. 35, (emphasis added).

The debtor failed to file: 1) any opposition to the trustee's objection; 2) an amended plan; or 3) a statement indicating that they do not intend to oppose the trustee's objection. The failure to comply with the court's order further delays hearing on the trustee's objection, and has caused additional, unnecessary work for the court.

The court's ruling required the debtor to file a pleading in this matter by January 30, 2024. The debtor(s) has failed to file any document which would apprise the court of her position regarding the creditor's objection to confirmation.

Counsel for the debtor shall be prepared to address this issue at the hearing on this matter, and to inform the court whether the debtor(s) concedes the objection.

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).

Understated Mortgage Arrears

The proposed Plan understates the arrearages owed to the objecting secured creditor. Pursuant to 11 U.S.C. §1322(b)(2), b(5) and 1325(a)(5)(B), the proposed plan must provide for full payment of the arrearages as well as ongoing monthly payments to the creditors.

The proposed plan lists arrears owed to the creditors are in the amount of \$147,064.97, while arrears owed are in the amount of \$168,967.83, as set forth in Claim No. 3.

Cure of the pre-petition arrearages of \$168,967.83 within 60 months, requires a minimum payment of \$2,816.13 per month through the plan. The proposed plan provides for payments of arrears in the amount of \$430.00 for two months and then \$350.00 per month for 58 months. Chapter 13 Plan, §§ 3.07, 7, ECF No. 1.

The court will sustain the objection on this basis and need not reach the remaining issues in the creditor's objection.

CIVIL MINUTE ORDER

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

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

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 denies confirmation of the chapter 13 plan.

47. [23-24370](#)-A-13 **IN RE: SARA KLINKENBORG**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
1-24-2024 [[21](#)]

LUCAS GARCIA/ATTY. FOR DBT.

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

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

Order: Civil minute order

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

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

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

CIVIL MINUTE ORDER

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

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

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

(A) File a Statement of No Opposition. If the debtor(s) agree that the Chapter 13 trustee's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than March 12, 2024. L.R. 230(c) ("A responding party who has

no opposition to the granting of the motion shall serve and file a statement to that effect...); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection not later than March 12, 2024; the response shall specifically address each issue raised in the trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than March 26, 2024. The evidentiary record will close after March 26, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the Chapter 13 trustee's objection by filing a modified plan, not later than March 12, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan; and

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

48. [23-23471](#)-A-13 **IN RE: MARY SCOTT**
[HAW-1](#)

CONTINUED MOTION TO PERMIT DEBTOR TO DEED JOINT TENANCY
INTEREST IN RESIDENCE TO HERSELF AND TO SON AND DAUGHTER IN
LAW
1-26-2024 [\[39\]](#)

HELGA WHITE/ATTY. FOR DBT.

Final Ruling

Motion: Allow Debtor to Transfer Interest in Real Property

Notice: Continued from February 13, 2024

Disposition: Granted

Order: Prepared by moving party

The hearing on the debtor's motion to allow the debtor to deed a joint tenancy interest in the debtor's real property located at QA to herself, her son, and daughter in law was continued as follows:

Not later than February 20, 2024, the Debtor will file an Estoppel Certificate that precludes her from dismissing the case or reducing payments to unsecured creditors by any amount less than 100 percent. Failure to file the certificate by February 20, 2024, will result in the Court denying the motion without further notice or hearing. If the Estoppel Certificate meets

the requirements, the Court will grant the motion. Ms. White will draft the order, and Mr. Enmark will approve it. The Clerk, U.S. Bankruptcy Court will be ordered to not dismiss this case without further order of the court.

Civil Minutes, ECF No. 50.

On February 15, 2024, the debtor filed the estoppel certificate as ordered. Estoppel Certificate, ECF No. 54. The court has reviewed the document and approves the motion.

The debtor shall submit an order granting the motion, consistent with this court's order. The order shall contain the following provision: "The Clerk, U.S. Bankruptcy Court shall not dismiss this case absent further order of the court."

49. [23-22972](#)-A-13 **IN RE: LISSETTE MUNOZ**
[DPC-2](#)

MOTION TO DISMISS CASE
1-26-2024 [\[55\]](#)

GEOFF WIGGS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Continued to March 12, 2024, at 9:00 a.m.

Order: Civil minute order

Opposition Due: February 13, 2024

Opposition Filed: February 13, 2024 - timely

Motion to Modify Plan Filed: February 7, 2024 - timely

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the plan.

A modified plan has been timely filed and set for hearing in this case. The scheduled hearing on the modification is March 12, 2024, at 9:00 a.m. The court will continue the hearing on this motion to dismiss to coincide with the hearing on the plan modification. If the modification is disapproved, and the motion to dismiss has not been withdrawn or otherwise resolved, the court may dismiss the case at the continued hearing.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the chapter 13 trustee's motion to dismiss is continued to March 12, 2024, at 9:00 a.m.

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.

50. [23-23672](#)-A-13 **IN RE: NAWAL BSHARAH**
[DPC-1](#)

MOTION TO DISMISS CASE
1-24-2024 [\[55\]](#)

CLAY PRESLEY/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Continued to March 12, 2024, at 9:00 a.m.

Order: Civil minute order

Opposition Due: February 13, 2024

Motion to Modify Plan Filed: January 31, 2024 - timely

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the plan.

A modified plan has been timely filed and set for hearing in this case. The scheduled hearing on the modification is March 12, 2024, at 9:00 a.m. The court will continue the hearing on this motion to dismiss to coincide with the hearing on the plan modification. If the modification is disapproved, and the motion to dismiss has not been withdrawn or otherwise resolved, the court may dismiss the case at the continued hearing.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the chapter 13 trustee's motion to dismiss is continued to March 12, 2024, at 9:00 a.m.

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.

51. [23-23872](#)-A-13 **IN RE: BRENDA/NAI SAEPHANH**
[CAS-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY ALLY BANK
11-27-2023 [[15](#)]

SCOTT JOHNSON/ATTY. FOR DBT.
CHERYL SKIGIN/ATTY. FOR MV.

No Ruling

52. [23-23176](#)-A-13 **IN RE: AMY BUDD**
[SLH-1](#)

OBJECTION TO CLAIM OF RC WILLEY FINANCIAL SERVICES, CLAIM
NUMBER 7
1-10-2024 [[16](#)]

SETH HANSON/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Objection: Objection to Claim

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

Disposition: Sustained

Order: Civil Minute Order

Deadline to File Non-Governmental Claims: November 22, 2023

Claim Filed: December 14, 2023

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, incorporated by Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). 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 objects to the claim of RC Willey Financial Services, Claim No. 7. The debtor contends that the claim was filed after the deadline to file claims.

LEGAL STANDARDS

Ordinarily, in chapter 13 and 12 cases, late-filed claims are to be disallowed if an objection is made to the claim. 11 U.S.C. § 502(b)(9). Some exceptions for tardily filed claims apply in chapter 7 cases. See *id.* And these exceptions permit the tardily filed claims in chapter 7 but may lower the priority of distribution on such claims unless certain conditions are satisfied. See *id.* § 726(a)(1)-(3).

Some exceptions also exist under the Federal Rules of Bankruptcy Procedure. See *id.* § 502(b)(9); Fed. R. Bankr. P. 3002(c). Federal Rule of Bankruptcy Procedure 9006(b)(3) provides that “[t]he court may enlarge the time for taking action under [certain rules] only to the extent and under the conditions stated in those rules.” Fed. R. Bankr. P. 9006(b)(3) (emphasis added). Rule 3002(c) is identified in Rule 9006(b)(3) as a rule for which the court cannot enlarge time except to the extent and under the conditions stated in the rule. *Id.*

In short, the general rule in chapter 13 and 12 cases is that a creditor must file a timely proof of claim to participate in the distribution of the debtor’s assets, even if the debt was listed in the debtor’s bankruptcy schedules. See *In re Barker*, 839 F.3d 1189, 1196 (9th Cir. 2016) (holding that bankruptcy court properly rejected creditor’s proofs of claim that were filed late in a chapter 13 case even though the debt had been scheduled). A plain reading of the applicable statutes and rules places a burden on each creditor in such cases to file a timely proof of claim. Absent an exception under Rule 3002(c), a claim will not be allowed if this burden is not satisfied. *Id.* at 1194.

DISCUSSION

Here, the respondent’s proof of claim was filed after the deadline for filing proofs of claim. None of the grounds for extending time to file a proof of claim under Rule 3002(c) are applicable. Fed. R. Bankr. P. 3002(c)(1)-(6). The exceptions in § 502(b)(9) for tardily filed claims under § 726(a) do not apply. So, the claim will be disallowed.

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.

Debtor’s objection to claim has been presented to the court. Having entered the default of respondent for failure to appear, timely

oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the objection,

IT IS ORDERED that the objection is sustained. Claim No. 7 will be disallowed.

53. [23-23676](#)-A-13 **IN RE: BARBARA MORAN-SMITH**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.
CUSICK
12-6-2023 [\[29\]](#)

MICHAEL HAYS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: Continued from January 3, 2024

Disposition: Sustained and confirmation denied

Order: Civil minute order

The hearing on the trustee's objection to confirmation was continued to allow the parties to augment the evidentiary record.

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).

The trustee contends the plan is not feasible as the debtor lacks sufficient income to fund the plan.

On January 30, 2024, the debtor filed a response to the trustee’s objection as ordered. Response, ECF No. 44. The response states that the debtor plans to sell real property to fund the plan. The motion to sell real property has been denied without prejudice. Accordingly, the court will sustain the trustee’s objection to confirmation.

CIVIL MINUTE ORDER

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

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

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.

54. [23-23676](#)-A-13 **IN RE: BARBARA MORAN-SMITH**
[MOH-2](#)

MOTION TO SELL
2-6-2024 [[48](#)]

MICHAEL HAYS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Sell Real Property
Disposition: Denied without prejudice
Order: Civil minute order

The debtor seeks an order to sell the real property located at 5034 Dewey Drive, Fair Oaks, California.

The court will deny the motion without prejudice on grounds of insufficient service of process.

The court is unable to determine if the motion and supporting papers were served properly on all parties in interest, including all creditors. Fed. R. Bankr. P. 2002. A certificate of service evidencing service of the motion and supporting papers has not been filed as required. LBR 9014-1(e).

CIVIL MINUTE ORDER

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

Debtor's motion to sell real property has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

55. [23-23676](#)-A-13 **IN RE: BARBARA MORAN-SMITH**
[RAS-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY MORTGAGE
ASSETS MANAGEMENT, LLC
11-20-2023 [[26](#)]

MICHAEL HAYS/ATTY. FOR DBT.
FANNY WAN/ATTY. FOR MV.

Final Ruling

Objection: Creditor's Objection to Confirmation of Plan
Notice: Continued from January 3, 2024
Disposition: Sustained and confirmation denied
Order: Civil minute order

Mortgage Assets Management, LLC, objects to confirmation of the debtor's plan. The hearing on the creditor's objection to confirmation was continued to allow the parties to augment the evidentiary record. While debtor's counsel failed to respond to the creditor's objection as ordered he filed a Response to the Chapter 13 trustee's objection. Response, ECF No. 44. Henceforth, counsel shall file responses in each matter as ordered.

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 objecting creditor holds a note which is secured by a deed of trust against real property located at 5034 Dewey Drive, Fair Oaks, California. The mortgage is a reverse mortgage and the sole borrower on the note, Barbara Joyce Moore, has passed away; accordingly, the note is fully matured. See Claim No. 2.

The Chapter 13 Plan calls for the sale of the real property by March 1, 2024. Chapter 13 Plan, Section 7, ECF No. 12.

While the obligation is listed in Class 2 of the plan the creditor contends the Chapter 13 Plan does not fully provide for its claim. Creditor's claim has been listed in the amount of \$183,159.16. this number used by the Debtor is not accurate. Claim No. 2 shows the amount due under the plan is \$200,151.16.

The response filed by the debtor states that she has filed a motion to sell real property which would resolve the objection raised by the objecting creditor. However, the court has denied the motion to sell real property. Accordingly, the objection will be sustained. Without the sale of the property the plan is not feasible.

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.

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

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

56. [23-23778](#)-A-13 **IN RE: SYBILLE WASSNER**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P
CUSICK
12-6-2023 [\[17\]](#)

KEVIN TANG/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan
Notice: Continued from January 3, 2024
Disposition: Sustained and confirmation denied
Order: Civil minute order

Attorney Kevin Tang is ordered to appear in this matter at 9:00 a.m. on February 27, 2024, in Department A. Appearance may be made by telephone or Zoom.

The hearing on the Chapter 13 trustee's objection to confirmation was continued from January 3, 2024, to allow the debtors to: 1) file a statement of non-opposition; 2) file opposition to the objection; or 3) file an amended Chapter 13 Plan.

DEBTORS FAILED TO RESPOND AS ORDERED

Failure of counsel or of a party to comply with these Rules, with the Federal Rules of Civil Procedure or the Federal Rules of Bankruptcy Procedure, or with any order of the Court may be grounds for imposition of any and all sanctions authorized by statute or rule or within the inherent power of the Court, including, without limitation, dismissal of any action, entry of default, finding of contempt, imposition of monetary sanctions or attorneys' fees and costs, and other lesser sanctions.

LBR 1001-1(g).

On January 4, 2024, the court ordered:

IT IS ORDERED THAT the hearing on this objection will be continued to February 27, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that if the debtor(s) elect not to oppose the objection then the debtor(s) shall file and serve a statement of nonopposition no later than January 30, 2024.

IT IS FURTHER ORDERED that unless this case is voluntarily converted to chapter 7, dismissed, or the trustee's objection to confirmation is withdrawn, the debtor(s) shall file and serve a written response to the objection not later than January 30, 2024. The response shall specifically address each issue raised in trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtors elect to file a modified plan in lieu of filing a response, then a modified plan shall be filed, served, and set for hearing not later than January 30, 2024.

IT IS FURTHER ORDERED that the trustee shall file and serve a reply, if any, no later than February 13, 2024. The evidentiary record will close after February 13, 2024. If the debtors do not timely file a modified plan or a written response, this objection will be sustained on the grounds stated in the objection without further notice or hearing.

Order, ECF No. 22.

The debtor failed to file: 1) any opposition to the trustee's objection; 2) an amended plan; or 3) a statement indicating that they do not intend to oppose the trustee's objection. The failure to comply with the court's order further delays hearing on the trustee's objection, and has caused additional, unnecessary work for the court.

The court's ruling required the debtor to file a pleading in this matter by January 30, 2024. The debtor(s) has failed to file any document which would apprise the court of her position regarding the trustee's objection to confirmation.

Counsel for the debtor shall be prepared to address this issue at the hearing on this matter, and to inform the court whether the debtor(s) concedes the objection.

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).

The trustee contends the plan is not feasible because:

Debtor admitted at the First Meeting of Creditors, held on November 30, 2023, that she was a traveling nurse and her contract with her former employer ended on November 22, 2023. She also advised that she has obtained new employment with Redlands Community Hospital, which starts December 10, 2023, and her income will be decreasing. Currently, the Trustee is not able to determine if the Debtor has the ability to make Plan payments, given the change in employment, and requested that the Debtor file Supplemental Schedules for I and J.

Objection, 2:1-7, ECF No. 17.

The debtor has failed to file amended schedules, and has failed to respond to the objection. The court finds that the debtor has failed to meet the burden of proof for plan confirmation, and that the plan is not feasible under 11 U.S.C. § 1325(a)(6). The court will sustain the objection.

TRUSTEE STATUS REPORT

On February 15, 2024, the trustee filed a status report. The report indicated that: (1) the debtor did not comply with the court's order to file a response; (2) amended schedules I and

J were filed on February 12, 2024, and that the trustee had reviewed the schedules; and (3) based upon the trustee review he no longer objects to confirmation of the proposed plan.

The debtor has yet to comply with the court's order, and the amended schedules were filed 13 days after the date which the court ordered. Moreover, the debtor has offered no explanation for her failure to comply with the court's order. The court will hear the matter as indicated in this ruling.

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.

57. [23-24379](#)-A-13 **IN RE: GRACE LEE**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
1-24-2024 [\[25\]](#)

JAMES KEENAN/ATTY. FOR DBT.

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

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

Order: Civil minute order

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

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

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

CIVIL MINUTE ORDER

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

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

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

(A) File a Statement of No Opposition. If the debtor(s) agree that the Chapter 13 trustee's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than March 12, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection not later than March 12, 2024; the response shall specifically address each issue raised in the trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than March 26, 2024. The evidentiary record will close after March 26, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the Chapter 13 trustee's objection by filing a modified plan, not later than March 12, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan; and

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

58. [23-22481](#)-A-13 **IN RE: SCOTT DAVIS**
[WW-3](#)

MOTION TO CONFIRM PLAN
1-11-2024 [[54](#)]

MARK WOLFF/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 \$550.00 with another payment of \$550.00 due prior to the hearing on this motion. The plan cannot be confirmed if the plan payments are not current.

ATTORNEY COMPENSATION

This case was filed July 27, 2023. The trustee contends that \$3.05 of the proposed Chapter 13 Plan states that debtor's attorney has chosen to comply with Local Bankruptcy Rule 2016-1(c). The maximum compensation allowed in a non-business case under the LBR 2016-1(c)(1) in effect when this case was filed was \$4,000.00. The plan provides for \$6,000.00 in compensation.

DEBTOR REPLY

On February 20, 2024, the debtor filed a timely reply. The reply is accompanied by a declaration of the debtor and exhibits.

Plan Delinquency

The debtor contends that payments under the proposed plan are current. The debtor has filed a declaration stating that he tendered two payments of \$550 to the trustee as follows: (1) \$550 via Cashier's Check sent on February 16, 2024; and (2) \$550 via postal money order sent on February 20, 2024. Declaration, ECF No. 63. Copies of the payments are submitted as Exhibits A and B, ECF No. 64.

Attorney Compensation

Debtor's counsel has agreed to change the amount of attorney fees owed to \$4,000 in the Order Confirming the Plan. As this change will harm no one the court approves the change as proposed.

The Chapter 13 trustee shall be prepared to apprise the court regarding the status of the plan payments. Unless the trustee has received the payments the motion will be denied.

CIVIL MINUTE ORDER

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

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

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

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

59. [23-24087](#)-A-13 **IN RE: KERRY LUCY**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.
CUSICK
12-20-2023 [16]

SETH HANSON/ATTY. FOR DBT.

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

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 to allow the parties to augment the evidentiary record.

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 trustee contends the plan is not feasible because the debtor's income changed, and consequently she does not earn income sufficient to fund the plan.

On January 10, 2024, the debtor filed a response as ordered which states:

On January 10, 2024, Debtor accepted a position with Goodleap as an associate mortgage specialist. WHEREFORE, the Debtor respectfully requests a continuance for this hearing on the Trustee's objection in order to allow for counsel to file supplemental schedules when more information is available concerning debtor's future wage income.

Response, 1:20-25, ECF No. 20.

Nothing further has been filed by either party. The debtor has failed to file any supplemental schedules. The court finds the proposed plan is not feasible under 11 U.S.C. § 1325(a)(6) and 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.

60. [23-23697](#)-A-13 **IN RE: SAM/CHREB ROS**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.
CUSICK
12-13-2023 [[19](#)]

MOHAMMAD MOKARRAM/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: Continued from January 17, 2024

Disposition: Sustained and confirmation denied

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 to allow the parties to augment the evidentiary record. The sole basis of the trustee's objection was that the debtors had failed to obtain: (1) a motion avoiding the judgment lien of BH Financial Services, Inc.; and (2) an order valuing the collateral of (2) TD Retail Card Services, or provide for this creditor in the plan. The proposed plan does not provide for the claim of TD Retail Card Services as a secured creditor.

On February 13, 2024, the court granted the debtors' motion to avoid the judicial lien of BH Financial Services, Inc. (MMM-1). Civil Minutes, ECF No. 40. However, the court notes that an order has not yet been entered. The debtors were to submit an order granting the motion avoiding the lien.

REDUCTION OF COLLATERAL VALUE WITHOUT A MOTION

LBR 3015-1(i) provides that "[t]he hearing on a valuation motion or motion to avoid lien] 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 fails to provide for the secured claim of TD Retail Card Services, Claim No. 6. The debtors have failed to file a motion to value the collateral of the creditor.

The debtors argue that they need not provide for this claim in the plan as follows:

The secured claim of TD Retail Card Services in the amount of \$1,813.91 appears to be misclassified as a secured claim but *should be an unsecured charge card*.

Debtors can simply object to this small claim when the Notice of Filed Claim is issued, unless it is amended to properly be classified as unsecured. Either way, the small amount of the claim does not factor feasibility of the Chapter 13 Plan filed, nor should it hold up confirmation of the case. 11 U.S.C. Section 1325(a)(5) clearly states "treatment of all secured claims may not be required" for confirmation of a Chapter 13 Plan.

Reply, 2:4-10, ECF No. 30 (emphasis added).

The creditor filed a claim and indicated the value of the collateral securing the obligation is \$1,813.91. Claim No. 6. Moreover, the claim describes the collateral as Diamond Stud Earrings, *id.* Attached to the claim are documents which appear to support the claim as secured. The final page of the attachments to the claim states that a security interest is held in the goods purchased pursuant to the financing agreement. Thus, absent an objection to the claim successfully refuting this allegation, the claim is secured.

While it is true that treatment of all secured claims may not be required for confirmation of a Chapter 13 Plan, under 11 U.S.C. § 1325(a)(5) the debtors must comply with the requirements of §§ 1325(a)(3), (6).

The trustee argues that payment of a secured debt impacts the feasibility of the plan, because the debtors have not proven who will make the payments on the secured debt. This is important as the debtors do not have the ability to make payments on the secured debt outside of the plan. Schedules I and J filed at the inception of the case show the debtors have \$1,600.00 net to pay into the plan. Schedules I/J, ECF No. 1. No payment to TD Retail Card Services is listed in Schedule J. The Chapter 13 Plan calls for monthly payments of \$1,600.00 for 15 months after which payments increase. Chapter 13 Plan, §§ 2.01, 7, ECF No. 3.

Good Faith

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

The court has reviewed the debtors' Schedule A/B in this case, ECF No. 1. At Item No. 12, "Jewelry" the debtors list only "Rings and bands". No earrings of any kind are listed. *Id.* Neither do the debtors disclose the transfer of any diamond stud earrings, or other jewelry in the Statement of Financial Affairs. *Id.*

The debtors are required to propose a plan in good faith under 11 U.S.C. § 1325(a)(3). Filing inaccurate schedules and statements,

which fail to disclose assets and/or transfers of assets does not evidence that the plan is proposed in good faith.

The court finds that the debtors have failed to prove the feasibility of the proposed plan under 11 U.S.C. § 1325(a)(6) as they have failed: (1) to submit an order avoiding the judicial lien of BH Financial Services, Inc.; (2) to indicate who will pay for the secured obligation to TD Retail Card Services. As such the debtors have not proven that the plan as proposed funds mathematically. Moreover, the court finds that the plan has not been proposed in good faith under 11 U.S.C. § 1325(a) as the debtors have failed to schedule an asset, diamond stud earrings, with a value of at least \$1,813.91.

The court will sustain the trustee's objection.

CIVIL MINUTE ORDER

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

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

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

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

61. [23-21999](#)-A-13 **IN RE: ROBERT BROWN**
[JLL-1](#)

MOTION TO CONFIRM PLAN
1-17-2024 [[42](#)]

LEO SPANOS/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).

ATTORNEY COMPENSATION

Attorney Fees Unclear and Uncertain

The Chapter 13 trustee opposes confirmation because it is unclear if the attorney compensation in this case complies with LBR 2016-1.

This case was filed on June 19, 2023, as a Chapter 7. At the inception of the case the attorney filed a Disclosure of Compensation which indicated that he had been paid \$3,000.00 prior to the filing of the case. Disclosure of Compensation, ECF No. 1.

The case was converted to Chapter 13 on September 30, 2023. A Supplemental Disclosure of Compensation has not been filed since the case was converted, as required, Fed. R. Bankr. P. 2016(b).

The debtor and counsel executed a Rights and Responsibilities form which states that the attorney received \$3,338.00 prior to filing the petition, and that the total fees to be charged for representation in the Chapter 13 matter are \$4,000.00. Rights and Responsibilities, ECF No. 49.

The proposed Chapter 13 Plan states that \$3,338.00 was paid prior to the filing of the case and that \$975.00 is to be paid under the plan. This totals \$4,313.00.

The Disclosure of Compensation conflicts with the information contained in the Rights and Responsibilities and the Plan. Moreover, counsel for the debtor has failed to file a Supplemental Disclosure of Compensation which would clarify the amounts which have been paid and are yet to be paid. Fed. R. Bankr. P. 2016(b).

The court will deny the motion as the debtor has failed to prove the amount of attorney fees to be paid under the plan. This impacts the monthly calculation of administrative expenses. Moreover, debtor's counsel has not complied with Fed. R. Bankr. P. 2016(b).

CIVIL MINUTE ORDER

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

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

The 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.