

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

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

DAY: TUESDAY
DATE: MAY 18, 2021
CALENDAR: 9:00 A.M. CHAPTER 13 CASES

RULINGS

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

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

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

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

CHANGES TO PREVIOUSLY PUBLISHED RULINGS

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

ERRORS IN RULINGS

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

1. [20-25101](#)-A-13 **IN RE: WILLIAM/JANELL WHITE**
[DPC-2](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
4-13-2021 [\[77\]](#)

TIMOTHY WALSH/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.

Tentative Ruling

Objection: Objection to Claim of Exemptions
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Sustained
Order: Civil minute order

EXEMPTIONS IN BANKRUPTCY

"The bankruptcy estate consists of all legal and equitable interests of the debtor in property as of the date of the filing of the petition." *Ford v. Konnoff (In re Konnoff)*, 356 B.R. 201 (B.A.P. 9th Cir. 2006) (citing 11 U.S.C. § 541(a)(1)). A debtor may exclude exempt property from property of the estate. 11 U.S.C. § 522(b)(1).

11 U.S.C. § 522 allows a debtor either to exempt property under federal bankruptcy exemptions under § 522(d), unless a state does not so authorize, or to exempt property under state or local law and non-bankruptcy federal law. *Id.* § 522(b)(2)-(3)(A), (d).

"California has opted out of the federal exemption scheme and limited [debtors in bankruptcy] to the exemptions debtors may claim in non-bankruptcy cases." *Wolfe v. Jacobson (In re Jacobson)*, 676 F.3d 1193, 1198 (9th Cir. 2012) (citations omitted); accord 11 U.S.C. §§ 522(b)(2), 522(b)(3)(A), 522(d); Cal. Civ. Proc. Code §§ 703.010(a), 703.130, 703.140.

In determining the scope or validity of an exemption claimed under state law, the court applies state law in effect on the date of the petition. 11 U.S.C. § 522(b)(3)(A); *Wolfe*, 676 F.3d at 1199 ("[B]ankruptcy exemptions are fixed at the time of the bankruptcy petition."); accord *In re Anderson*, 824 F.2d 754, 756 (9th Cir. 1987). "In California, exemptions are to be construed liberally in favor of the debtor." *In re Rawn*, 199 B.R. 733, 734 (Bankr. E.D. Cal. 1996); see also *Sun Ltd. v. Casey*, 157 Cal. Rptr. 576, 576 (Cal. Ct. App. 1979).

ANALYSIS

"Disposable earnings that would otherwise not be subject to levy under Section 706.050 that are levied upon or otherwise sought to be subjected to the enforcement of a money judgment are exempt if prior to payment to the employee they were not subject to an earnings withholding order or an earnings assignment order for support," C.C.P. 704.070(b)(2).

Under, C.C.P. § 704.070, "If the debtor's earnings were not subject to a prepetition earnings withholding or earnings assignment order for support, the exemption amount is generally 75% of the employee's weekly disposable earnings, unless the debtor's weekly disposable earnings exceed 40 times the state minimum hourly wage in effect at the time the earnings are payable, in which case the exemption amount is the debtor's weekly disposable earnings reduced by 50% of the excess amount," P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy*, Governing Law, Jurisdiction and Venue, Specific Exemptions ¶ 7:355 (Rutter Group December 2019).

Here the debtors have claimed an interest in bank accounts with Pacific Postal Credit Union (savings account), with a value of \$592.00, Bank of America, (checking account), with a value of \$2,268.00, and Wells Fargo (checking & savings accounts), with a combined value of \$1,768.00, as exempt under C.C.P. § 704.070 in their full amounts listed, ECF No. 1. The combined total is \$4,628.00.

Under California Code of Civil Procedure § 704.070(b)(2), if the debtors have wage income, they may not claim the entire asset values as exempt since generally only 75% of the paid earnings that can be traced into deposit accounts are exempt. If the debtors' main source of income is a pension or retirement, then debtors are using an improper exemption. Here the debtors' Schedule I indicates that both debtors are not employed, and their main source of income is pension or retirement income, ECF No. 1. Therefore, the debtors improperly claimed exemptions under C.C.P. § 704.070.

CIVIL MINUTE ORDER

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

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

The trustee's objection to claim of exemptions 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.

2. [21-20401](#)-A-13 **IN RE: RAFAEL QUIROZ**

CONTINUED ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
4-12-2021 [\[40\]](#)

PETER MACALUSO/ATTY. FOR DBT.
05/04/21 INSTALLMENT FEE PAID \$5.01

Final Ruling

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

3. [21-20811](#)-A-13 **IN RE: LANDER GREEN**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
4-21-2021 [\[39\]](#)

ARETE KOSTOPOULOS/ATTY. FOR DBT.

Final Ruling

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

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

CIVIL MINUTE ORDER

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

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

4. [21-20915](#)-A-13 **IN RE: ADREINA DESPANIE**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
4-29-2021 [\[32\]](#)

STEELE LANPHIER/ATTY. FOR DBT.

Tentative Ruling

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

5. [19-22618](#)-A-13 **IN RE: RANDY WHITE**
[WW-4](#)

MOTION TO INCUR DEBT
4-8-2021 [\[56\]](#)

MARK WOLFF/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

6. [21-20819](#)-A-13 **IN RE: JEREMIAH BRASHER AND ANGELA**
HOOVER-BRASHER
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
4-21-2021 [\[18\]](#)

JULIUS CHERRY/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor has the burden of proving that

the plan complies with all statutory requirements of confirmation. *In re Andrews*, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*, 32 F.3d 405, 407-08 (9th Cir. 1994).

11 U.S.C. § 521

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

But the statutorily required documents do not define the outer limits of documentation debtor's duties. The chapter 13 trustee has discretion to ask for far more documentation. Section 521 requires that the debtor ". . . cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties under this title." 11 U.S.C. § 521(a)(3) (emphasis added). As one commentator noted, "Cooperate" is a broad term, indeed, and must be construed that whenever the trustee calls upon the debtor for assistance in the performance of his duties, the debtor is required to respond, at least if the request is not unreasonable." 4 *Collier on Bankruptcy* ¶ 521.15 (Alan N. Resnick & Henry J. Sommer eds., 16th ed. rev. 2018). Paramount among the chapter 13 trustee's duties is to "appear and be heard" regarding plan confirmation. 11 U.S.C. §§ 1302(b)(2)(B), 1322 (mandatory and optional plan contents), 1325 (elements for plan confirmation). Neither the code, nor the rules, prescribe a deadline for that cooperation, and this court finds that the debtor is entitled to a reasonable time to respond to the trustee's inquiries and requests for documentation.

Schedule I

Here the debtor's deductions on his pay advices and the joint debtor's pay advices do not match Schedule I, ECF No. 1. The trustee requested Schedule I be amended. To date, no amendments have been filed. The court will sustain confirmation under 11 U.S.C. 521(a)(1)(B).

Schedule J

In Schedule J, the debtors claimed a \$350.00 expense for medical and dental care, *Id.* However, the debtor's plan calls for monthly payments of \$3,000.00, Plan § 2.01, ECF No. 3. The debtor's

Schedules I and J state a monthly net income of exactly \$3,000.00, ECF No. 1. Although the debtors are above median income, the debtors haven't shown their budget is feasible. The trustee requested that Schedule J be amended to exclude the medical and dental care expense. To date, no amendments have been filed. The court will sustain the trustee's objection under § 521(a)(1)(B).

CIVIL MINUTE ORDER

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

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

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

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

7. [21-20825](#)-A-13 **IN RE: STEPHEN WACHIRA**
[JMC-2](#)

MOTION TO CONFIRM PLAN
4-6-2021 [\[23\]](#)

JOSEPH CANNING/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).

11 U.S.C. § 1325(a) (6)

11 U.S.C. § 1325(a) (6) requires that a chapter 13 plan is feasible, and that the debtor is able to comply with its terms. Here the debtor's payments under the proposed plan are delinquent in the amount of \$2,084.00. Therefore the debtor hasn't shown ability to pay under § 1325(a) (6).

11 U.S.C. § 521

According to Schedule J, the debtor owes a domestic support obligation. 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. Under L.B.R. 3015-1(b) (6), the debtor is required to serve upon the trustee no later than fourteen days after the filing of the petition a Domestic Support Obligation Checklist. To date, the debtor has failed to provide the trustee with the Domestic Support Obligation Checklist. The debtor has failed to comply with 11 U.S.C. § 521(a) (3).

11 U.S.C. § 1308

Section 1308 of the Bankruptcy Code provides: "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).

The debtor testified under oath at the Meeting of Creditors on April 22, 2021 that he did not file all income tax returns for the four-year period to the filing of the petition including the tax years ending 2017 and 2018. The trustee "held open" the meeting of creditors to allow the debtor additional time to file his 2017 and 2018 tax returns, pursuant to 11 U.S.C. § 1308. The continued meeting will be held May 20, 2021 at which the debtor must have filed tax returns. The court will deny plan confirmation, given the current circumstances of 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 debtor's motion to confirm a chapter 13 plan has been presented to the court. Having considered the motion together with papers filed in support and opposition to it, and having heard the

arguments of counsel, if any, and good cause appearing, presented at the hearing,

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

8. [16-26242](#)-A-13 **IN RE: STEVEN/LINDA MAYNERICH**
[PGM-5](#)

MOTION TO REFINANCE
4-20-2021 [\[101\]](#)

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

Final Ruling

Motion: Approve New Debt [Refinance Mortgage Loan]
Notice: LBR 9014-1(f)(1); trustee's non-opposition filed
Disposition: Denied
Order: Civil minute order

Subject Property: 773 Roscommon Dr., Vacaville, CA 95688
Proposed Refinance: \$2,558.00/mo (for first 132 months);
\$2,287.00/mo (for remaining 19 years); 3.25% fixed interest

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 Court may approve an *ex parte* motion by the debtor to refinance existing debt(s) encumbering the debtor's residence if the trustee's written consent is filed with or as part of the motion. The debtor's motion and the trustee's approval are their certification to the Court that...[t]he monthly payment (the principal and interest payment on account of the new debt plus all impounds, taxes, insurance, association fees, and bonds and other assessments) will not exceed the greater of the debtor's current such monthly payment(s) on the existing debt(s) being paid or \$2,500.00. The Court will not approve *ex parte* motions to obtain secured credit pursuant to 11 U.S.C. § 364(d)," LBR 3015-1(h)(1)(C)(vii).

Here the proposed refinance payment is \$2,558.00/month. In this case, the refinance payment should not exceed \$2,500.00 under 3015-1(h)(1)(C)(vii).

The debtor's most recently filed Schedules I and J show a monthly net income of \$888.76, ECF No. 94. Those schedules were filed on May 29, 2018. No amended Schedules I and J have been filed indicating

that the debtor can afford both the plan payment and the proposed monthly loan payment of principal and interest that would result from obtaining this financing. The debtor failed to show this proposed refinance is feasible.

CIVIL MINUTE ORDER

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

The debtors' Motion to Refinance 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.

9. [20-23442](#)-A-13 **IN RE: AERON WALLACE**
[NLL-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
3-19-2021 [[31](#)]

MARY TERRANELLA/ATTY. FOR DBT.
NANCY LEE/ATTY. FOR MV.
U.S. BANK, N.A. VS.; RESPONSIVE PLEADING

No Ruling

10. [20-24242](#)-A-13 **IN RE: ROBERT MAC BRIDE**
[DPC-2](#)

CONTINUED MOTION TO DISMISS CASE
2-25-2021 [[56](#)]

RESPONSIVE PLEADING

No Ruling

11. [20-24242](#)-A-13 **IN RE: ROBERT MAC BRIDE**
[RSM-3](#)

MOTION TO CONFIRM PLAN
3-24-2021 [\[65\]](#)

ROBERT MAC BRIDE/ATTY. FOR MV.
RESPONSIVE PLEADING

Final Ruling

Motion: Confirmation of a Chapter 13 Plan

Disposition: Denied without prejudice

Order: Civil minute order

All creditors and parties in interest have not received the notice required by Federal Rule of Bankruptcy Procedure 2002(b). The certificate of service shows that Deutsche Bank National Trust Co. and NewRez CO PHH Mortgage Services have not received notice.

INSUFFICIENT SERVICE

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

COURT PREFERS USE OF THE CLERK'S MATRIX

There are reasons that the court prefers the use of the court's matrix as the standard list of creditors and parties in interest to whom a Rule 2002(a) notice is transmitted. Creditors and parties in interest, other than the debtor, are added to this matrix if they (i) are included in the Master Address List at the outset of the case by the debtor, (ii) are added to an amended Master Address List filed with the court, (iii) file a proof of claim in the case, (iv) file a request for special notice under § 342(e) or Fed. R. Bankr. P. 2002(g), (v) file a request with the Clerk's office to be added to the mailing list, (vi) file a global request under Rule 2002(g)(4) and 11 U.S.C. § 342(f) (assuming that they are originally identified as a creditor in the Master Address List by the debtor), or (vii) file a designation under Rule 5003(e). The court's matrix thus updates virtually automatically whenever a creditor or party in interest files a proof of claim, requests special notice, or files a global notice request under § 342(f). See 11 U.S.C. § 342(e), (f)(1)-(2); see also Fed. R. Bankr. P. 2002(g)(1), (2).

It would be cumbersome and impracticable for an attorney to ensure proper notice is given by monitoring each filing of a proof of claim, request for special notice, designation pursuant to Rule 5003(e), and global request made potentially with a different bankruptcy court. Therefore, the court prefers its mailing matrix for notice purposes because parties relying on their own self-

constructed list for notice tend to miss at least one or more creditors or transmit notice to incorrect addresses for creditors and parties in interest.

12. [21-20846](#)-A-13 **IN RE: ANTOINETTE EDWARDS**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
4-20-2021 [\[14\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

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).

11 U.S.C. § 521

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

11 U.S.C. § 1325(a)(4)

This plan fails the liquidation analysis under § 1325(a)(4). The debtor's Schedules A/B and C, ECF No. 1, show that the total value of the debtor's nonexempt property is \$44,111.00. However, the total amount this plan pays to unsecured creditors is \$0. The debtor failed to prove the unsecured creditors would receive the minimum which they would in a chapter 7 case. The court will sustain the objection under § 1325(a)(4).

11 U.S.C. § 1325(a)(6)

11 U.S.C. § 1325(a)(6) requires that a chapter 13 plan is feasible, and that the debtor is able to comply with its terms. Here Class 2(C) creditors CalHFA Mortgage Assistance and Melanie M. Carter were not served motions to avoid lien. Since feasibility of the plan depends on granting motions to avoid the liens of these creditors, the debtor has failed to show the plan is feasible. The court will sustain the objection under § 1325(a)(6).

FRANKLIN CREDIT MANAGEMENT

The trustee also objected to confirmation, stating it is unclear whether Franklin Credit Management, who was placed in Class 1, is a creditor under 11 U.S.C. § 101(10). The trustee stated that since there has been a foreclosure on the subject property the debtor is no longer the owner of the property and therefore the creditor no longer has a claim against the debtor or the estate. The court shall not issue a ruling on the trustee's objection to confirmation on this basis at this time but will sustain the trustee's objection on the other grounds stated herein.

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.

13. [21-20846](#)-A-13 **IN RE: ANTOINETTE EDWARDS**
[GB-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK TRUST
NATIONAL ASSOCIATION
4-21-2021 [\[24\]](#)

PETER MACALUSO/ATTY. FOR DBT.
ERICA LOFTIS/ATTY. FOR MV.

Tentative Ruling

Objection: Creditor's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

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

11 U.S.C. § 1325(a) (5)

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

By placing this secured claim in Class 4, the plan infracts § 1325(a) (5). The allowed secured claim in this case includes the prepetition arrearage shown on the proof of claim (Claim No. 2-1), which states a pre-petition arrearage of \$69,233.43. Section 1325(a) (5) (B) (ii) read together with § 1322(b) (5) requires that the plan provide for payment in full of the delinquent prepetition arrearage as part of the allowed amount of the secured claim. See *id.* §§ 1325(a) (5) (B) (ii), 1322(b) (5) (permitting the curing of any default and ongoing maintenance payments on long-term debt maturing after the plan's term).

Because the plan fails to provide for cure of the prepetition arrearage, the plan does not provide payment distributions on account of this secured claim that are at least equal to the allowed amount of such claim. Further, the secured claim holder does not accept the plan, and Class 4 is not a mechanism for surrender.

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

CIVIL MINUTE ORDER

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

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

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.

IT IS FURTHER ORDERED that a Chapter 13 plan must be confirmed no later than the first hearing date available after the 75-day period that commences on the date of this hearing. If a Chapter 13 plan has not been confirmed by such bar date, the court may dismiss the case on the trustee's motion. See 11 U.S.C. § 1307(c)(1).

14. [21-20956](#)-A-13 **IN RE: JON HILL**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
4-23-2021 [\[22\]](#)

GEORGE BURKE/ATTY. FOR DBT.

Final Ruling

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

15. [20-24661](#)-A-13 **IN RE: PATRICIA KELLY**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
4-21-2021 [[35](#)]

CHINONYE UGORJI/ATTY. FOR DBT.

No Ruling

16. [21-20167](#)-A-13 **IN RE: HARLAN/CHARLOTTE CONFER**
[BHS-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-15-2021 [[20](#)]

MICHAEL HAYS/ATTY. FOR DBT.
BARRY SPITZER/ATTY. FOR MV.
JACOB WATSON AND JAMES WATSON VS.; RESPONSIVE PLEADING

No Ruling

17. [18-25184](#)-A-13 **IN RE: MICHELE DAVENPORT**
[DVW-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
4-1-2021 [[70](#)]

CHAD JOHNSON/ATTY. FOR DBT.
DIANE WEIFENBACH/ATTY. FOR MV.
U.S. BANK, NATIONAL ASSOCIATION VS.; RESPONSIVE PLEADING

No Ruling

18. [19-24685](#)-A-13 **IN RE: EMILIA ARDELEAN**
[TBG-2](#)

CONTINUED MOTION TO CONFIRM PLAN
10-11-2019 [[37](#)]

STEPHAN BROWN/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

19. [21-20791](#)-A-13 **IN RE: ELIZABETH ROHDE**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.
CUSICK
4-14-2021 [\[18\]](#)

YASHA RAHIMZADEH/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

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

11 U.S.C. § 521

The debtor has failed to provide the trustee with required or requested documents. See 11 U.S.C. § 521(a)(3)-(4). The debtor did not provide proof of his social security number at the 341 meeting. The court will sustain the trustee's objection under § 521.

11 U.S.C. § 1322(d)

Absent application of the CARES Act, 11 U.S.C. § 1329(d) (which is not applicable here), a chapter 13 plan may not exceed five years, 11 U.S.C. § 1322(d). Here the U.S. Department of Education filed a proof of claim (Claim No. 2-1) for \$270,174.00. The debtor's proposed plan sets forth a monthly payment of \$1,045.13 for 60 months with 100% to unsecured creditors, ECF No. 4. The trustee calculates that given the U.S. Department of Education's proof of claim, the plan is overextended to 101 months. The court will sustain the trustee's objection under § 1322.

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.

20. [20-25492](#)-A-13 **IN RE: MARIA DEL SOCORRO/RENE ORTIZ**

CONTINUED ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
4-14-2021 [\[76\]](#)

PETER MACALUSO/ATTY. FOR DBT.
05/04/21 FINAL INSTALLMENT FEE PAID \$5.01

Final Ruling

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

21. [19-27493](#)-A-13 **IN RE: ROGELIO VILLAR**
[PGM-2](#)

MOTION TO REFINANCE
4-13-2021 [\[65\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Approve New Debt [Refinance Mortgage Loan]

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

Disposition: Granted

Order: Prepared by moving party

Subject Property: 6602 Thalia Way, Citrus Heights, CA 95621-5593

Proposed Refinance: \$2,894.00/mo (first 132 months); \$2,621.00 (for remaining term of 19 years); 3.5% fixed interest

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 Court may approve an *ex parte* motion by the debtor to refinance existing debt(s) encumbering the debtor's residence if the trustee's written consent is filed with or as part of the motion. The debtor's motion and the trustee's approval are their certification to the Court that...[t]he monthly payment (the principal and interest payment on account of the new debt plus all impounds, taxes, insurance, association fees, and bonds and other assessments) will not exceed the greater of the debtor's current such monthly payment(s) on the existing debt(s) being paid or \$2,500.00. The Court will not approve *ex parte* motions to obtain secured credit pursuant to 11 U.S.C. § 364(d)," LBR 3015-1(h)(1)(C)(vii).

The debtor seeks to incur new debt to refinance an existing mortgage loan. The court finds the proposed refinance complies with LBR 3015-1(h). Also, under the most recently filed Schedules I and J (filed on August 14, 2020), ECF No. 48, the debtor can afford both the plan payment and the proposed monthly loan payment of principal and interest that would result from obtaining this financing. The court will grant the motion and approve the debtor's incurring of this new debt.

It is further ordered that the proceeds from the refinance of real property are to be disbursed directly to the trustee to pay all creditors in full.