

**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: JUNE 15, 2021
CALENDAR: 9:00 A.M. CHAPTER 13 CASES

COURT REOPENING

Effective June 14, 2021, courthouses for the Eastern District of California are reopened to the public. General Order No. 631 ¶ 1. Each judge within the district has discretion to continue to hold hearings remotely or to hold hearings in person. *Id.* at ¶ 4. The Honorable Fredrick E. Clement will hold remote and live hearings under the following schedule:

Until July 11, 2021

From the effective date of General Order No. 631 through July 11, 2021, Department A will continue to conduct hearings exclusively on a remote basis. Persons who wish to appear must do so by way of CourtCall; reservations for such an appearance may be arranged by calling (866) 582-6878.

On and After July 12, 2021

Starting July 12, 2021, Department A will resume in person hearings. However, any person preferring to appear via CourtCall may do so, notwithstanding any limitation contained in the "Telephonic Court Appearance through CourtCall Conference Service" on the court's website.

RULINGS

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

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

"Tentative Ruling" means the likely disposition, and the reasons therefor, are set forth herein. The matter will be called. Aggrieved parties or

parties for whom written opposition was not required should rise and be heard. Parties favored by the tentative ruling need not appear. Non-appearing parties are advised that the court may adopt a ruling other than that set forth herein without further hearing or notice.

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

CHANGES TO PREVIOUSLY PUBLISHED RULINGS

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

ERRORS IN RULINGS

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

1. [21-21205](#)-A-13 **IN RE: BARBARA MARDEN**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
5-19-2021 [\[46\]](#)

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).

F.R.B.P. 4002(b)

Among the documents that a chapter 13 debtor must surrender to the trustee is a photographic identification and proof of social security number, Fed. R. Bankr. P. 4002(b)(1). Here the debtor failed to provide his social security number at the meeting of creditors. The debtor did not comply with F.R.B.P. 4002(b).

11 U.S.C. § 1325(a)(4)

11 U.S.C. § 1325(a)(4) requires a chapter 13 plan to pay unsecured creditors at least the amount they would have received in a chapter 7 case. Here the debtor's schedules A/B and C, ECF No. 14, show non-exempt property in the amount of \$11,044.00. The plan does not provide for any payment for unsecured creditors, ECF No. 23. The plan fails to comply under § 1325(a)(4).

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, due to the numerous claims that have been filed, the trustee calculates that the plan will be overextended to 230 months - well above the 60 months allowed under § 1322(d).

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 failed to amend Schedules E/F to include credit card claims or other claims the trustee requested.

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).

The plan proposes \$0.00 monthly payments to Oleg Andreyev (Class 1), ECF No. 23. The plan states that mortgage arrears owed to the creditor total \$130,000.00. *Id.* The creditor filed an objection to confirmation and also filed a Proof of Claim, Claim No. 1-1, stating a secured amount of \$281,484.22. By not accounting for paying Oleg Andreyev's claim in the plan, the plan violates § 1325(a)(5).

MISCLASSIFICATION OF CLAIM

"Class 1 includes all delinquent secured claims that mature after completion of this plan..." Plan § 3.07, ECF No. 23. The plan proposes \$0.00 monthly payments to Oleg Andreyev (Class 1), ECF No. 23. The creditor filed an objection to confirmation and Proof of Claim No. 1-1, stating the loan has fully matured on November 11, 2018. Therefore, the creditor's claim has been misclassified in Class 1.

For the foregoing reasons, 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.

2. [21-21205](#)-A-13 **IN RE: BARBARA MARDEN**
[PPR-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY OLEG ANDREYEV
5-4-2021 [\[31\]](#)

BONNI MANTOVANI/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).

The plan proposes \$0.00 monthly payments to the creditor, ECF No. 23. The plan states that mortgage arrears owed to the creditor total \$130,000.00. *Id.* The creditor filed a Proof of Claim, Claim No. 1-1, with a secured amount of \$281,484.22. Since the plan does not provide for how the creditor's claim's will be paid, the plan violates § 1325(a)(5).

MISCLASSIFICATION OF CLAIM

"Class 1 includes all delinquent secured claims that mature after completion of this plan..." Plan § 3.07, ECF No. 23. The plan proposes \$0.00 monthly payments to Oleg Andreyev (Class 1), ECF No. 23. The creditor filed an objection to confirmation and Proof of Claim No.

1-1, stating the loan has fully matured on November 11, 2018. Therefore, the creditor's claim has been misclassified in Class 1.

11 U.S.C. § 1325(a)(6)

Under 11 U.S.C. § 1325(a)(6), a chapter 13 plan must be feasible, and the debtor must show ability to comply with its terms. The debtor proposes plan payments of \$600.00 per month, ECF No. 23. The debtor's Schedule J indicates a monthly net income of \$576.00, ECF No. 20. Schedule E/F (ECF No. 16) and plan do not account for the creditor's claim. The creditor filed a Proof of Claim, Claim No. 1-1, with a secured amount of \$281,484.22. Therefore, the debtor hasn't demonstrated ability to fund the plan while also accounting for the creditor's Claim No. 1-1.

For the foregoing reasons, the court will sustain 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.

Oleg Andreyev'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.

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

MOTION TO CONFIRM PLAN
5-3-2021 [\[46\]](#)

ARETE KOSTOPOULOS/ATTY. FOR DBT.

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by the movant, approved by the trustee

Subject: First Amended Chapter 13 Plan, April 30, 2021

DEFAULT OF RESPONDENT

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

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.

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

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

MARK WOLFF/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

5. [21-20819](#)-A-13 **IN RE: JEREMIAH BRASHER AND ANGELA**
HOOVER-BRASHER
[DPC-1](#)

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

JULIUS CHERRY/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Since the trustee and the debtors filed a joint status report stating the parties agreed that all issues are resolved and requesting the court to grant confirmation of the plan, ECF No. 29, the court will drop this matter from the calendar as moot.

6. [21-21421](#)-A-13 **IN RE: DANIEL GIFFIN**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
5-24-2021 [[15](#)]

MATTHEW DECAMINADA/ATTY. FOR DBT.
5/24/21 INSTALLMENT FEE PAID \$78

Tentative Ruling

A partial filing fee having been paid on May 24, 2021 the remaining balance of this installment payment is \$1.00. 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.

7. [21-21421](#)-A-13 **IN RE: DANIEL GIFFIN**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
5-26-2021 [\[16\]](#)

MATTHEW DECAMINADA/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).

F.R.B.P. 4002(b)

Among the documents that a chapter 13 debtor must surrender to the trustee is a photographic identification and proof of social security number, Fed. R. Bankr. P. 4002(b)(1). Here the debtor failed to provide his social security number at the meeting of creditors as required under F.R.B.P. 4002(b).

11 U.S.C. § 1325(a)(6)

Under 11 U.S.C. § 1325(a)(6), a chapter 13 plan must be feasible, and the debtor must show ability to comply with its terms. Here the debtor is delinquent \$1,315.00. The debtor has paid \$0.00 under the plan. The debtor therefore failed to show the plan is feasible or that he is able to comply with its terms.

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.

8. [21-21223](#)-A-13 **IN RE: BRUCE SHEETS**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY KRISTEN A. KOO
5-26-2021 [\[31\]](#)

ARASTO FARSAD/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. § 1325(a)(6)

Under 11 U.S.C. § 1325(a)(6), a chapter 13 plan must be feasible and the debtor must show ability to comply with its terms.

Delinquency

The debtor is delinquent \$7,500.00. The debtor therefore failed to show the plan is feasible or that he is able to comply with its terms.

Transfer of Title to Vacaville Home

At the Meeting of Creditors, the debtor testified he may not have any interest in the Vacaville Home, as he transferred title prior to filing to a Jaisun Lee. The debtor did not make clear what agreement they had regarding the property and how it affects the property, or whether it is property of the estate. The debtor's financial

position hasn't been clarified as needed for the court to determine feasibility.

Family/Co-Owner of Vacaville Property Support"

In line 8h of the debtor's Schedule I, ECF No. 20, the debtor listed a monthly income of \$6,000.00 as "Family/Co-Owner of Vacaville Property Support." The contribution allows for the plan to be feasible. However, no declaration has been filed by the family member or co-owner stating ability to contribute to plan payments and willingness to contribute to plan payments. The debtor therefore failed to show feasibility.

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).

Here the creditor Travis Credit Union's two claims (Claims No. 2-1 and 3-1) were placed in class 4 of the proposed plan, ECF No. 22. However, Class 4 claims "mature after completion of this plan, are not in default, and are not modified by this plan." Plan, § 3.10, ECF No. 22. The plan will complete in 2026. Travis Credit Union's Claim No. 2-1 matures in 2021. Its Claim No. 3-1 matures in 2022. Therefore, the creditor's claims have been misclassified in violation of § 1325(a) (5) and should have been included in Class 2.

FAILURE TO LIST CREDITORS

After the meeting of creditors, the trustee discovered the debtor failed to list several secured creditors in his schedules. The debtor testified at the meeting that he has a solar lien on his property in Hawaii with Sunrun, who was not listed in his Schedule E/F, ECF No. 1. Select Portfolio Services also has a secured claim (Claim No. 1-1) for \$249,069.76 but is not listed in the debtor's schedules or the plan, ECF No. 22. Failure to list secured creditors in the schedules and plan constitutes unreasonable delay that is prejudicial to creditors and also material default, which are causes for case dismissal under 11 U.S.C. § 1307(c). The court cannot confirm the plan with the debtor's schedules and plan written as they are.

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.

9. [21-20928](#)-A-13 **IN RE: MARK KAYLOR**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK
5-19-2021 [\[25\]](#)

ERIC SCHWAB/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

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

NO MOTION TO CONFIRM

The debtor has failed to file a motion to confirm a plan. The case has been pending for approximately 3 months. This constitutes unreasonable delay by the debtor that is prejudicial to creditors, which would be grounds for dismissal under § 1307(c).

11 U.S.C. § 521

Tax Return

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).

Domestic Support Obligation Checklist

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 meeting of creditors was continued from May 13, 2021 to June 10, 2021 to allow the debtor additional time to file his 2018-2020 tax returns. So far, the debtor did not show he complied with § 1308.

11 U.S.C. § 1325(a)(6)

11 U.S.C. § 1325(a)(6) requires that a chapter 13 plan be feasible, and that the debtor is able to comply with its terms.

Claim No. 8-1

Debra Kaylor is a creditor who holds priority Claim No. 8-1 for \$890,000.00. This proposes numerous feasibility problems for the debtor. The debtor's schedules don't account for the creditor's claim and Schedule J states a monthly net income of \$400.00. The debtor has not shown ability to pay. Also, given this secured claim, the debtor's plan will not complete in the 24 months as promised in the plan, ECF No. 19.

Sale of Real Property

Courts have historically found balloon payments or otherwise that are involved in plan payments as insufficient evidence of the debtor's ability to pay under the plan, as they are contingent on a speculative event to take place during the life of the plan, See *In Re Gavia* 24 BR 573,574 (9th Cir. BAP 1982).

The debtor proposes to make plan payments for 24 months under the "Further Non-Standard Provisions" as follows: "The Debtor will refinance his home by March 25, 2021, in order to pay off the balance of the Chapter 13 Plan at that time." ECF No. 19. The debtor did not file a declaration that accounts for the proposed refinance or sale, and there has not been a motion to employ a broker. Therefore, the plan as proposed is contingent on a future speculative event. The court will deny modification of the plan, as the debtor has not demonstrated ability to pay according to the plan.

11 U.S.C. § 109(e)

"Only an individual with regular income that owes, on the date of the filing of petition...noncontingent, liquidated, secured debts of less than \$1,257,850.00...may be a debtor under chapter of this title." 11 U.S.C. § 109(e).

The debtor listed in his schedules that the total amount of secured claims is \$385,374.00. In Schedule A/B, the debtor stated that he owes creditor Debra Kaylor \$13,878.00, ECF No. 18. However, Debra Kaylor filed Claim No. 8-1 for a secured amount of \$890,000.00. Even if the court subtracted the amount the debtor states he owes Debra Kaylor (\$13,878.00) from the claim amount (\$890,000.00), the total amount of secured claims against the debtor (\$385,374.00 + \$890,000.00 - \$13,878.00) comes out to be \$1,261,496.00. This exceeds the maximum amount of secured debts a chapter 13 debtor may owe. The debtor also hasn't shown he is eligible for Chapter 13 relief under 11 U.S.C. § 109(e).

ATTORNEY FEES

The boxes in Section 3.05 and 3.06 of the plan, ECF No. 19, indicate that the debtor's attorney has accepted \$4,000.00 prior to filing, and the balance left to be paid through the plan is \$0.00. However, the Statement of Rights and Responsibilities, ECF No. 20, and the Disclosure of Compensation, ECF No. 18, indicate that the attorney agreed to accept \$4,000.00 and \$0.00 has been paid pre-filing and that \$4,000.00 is due. The debtor has not made clear which provisions regarding the attorney's fees will remain effective.

For the foregoing reasons, 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.

10. [21-20928](#)-A-13 **IN RE: MARK KAYLOR**
[DRL-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DEBRA LEE KAYLOR
5-19-2021 [\[29\]](#)

ERIC SCHWAB/ATTY. FOR DBT.
DAVID LANE/ATTY. FOR MV.

No Ruling

11. [21-21334](#)-A-13 **IN RE: DANIEL LUPINA**

OBJECTION TO CONFIRMATION OF PLAN BY KELLY WILLIAMS
5-20-2021 [\[23\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.
JOE CAFFREY/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: Continued to July 13, 2021, at 9:00 a.m.

Order: Civil minute order

CONTINUANCE

A confirmation objection initiates a contested matter, so Rule 9014 applies to it. Fed. R. Bankr. P. 9014(a)-(b). This means the objection must be served as required by Rule 7004. Fed. R. Bankr. P. 7004(a)-(b). Rule 7004 further requires that the debtor's attorney be served whenever the debtor is represented and service is made upon the debtor. Fed. R. Bankr. P. 7004(g).

Service of the objection was insufficient. The movant never filed a certificate of service to accompany this motion. The court will continue this hearing to the date stated in the civil minute order so that the creditor may serve the objection and give notice of the continued hearing.

LACK OF DOCKET CONTROL NUMBER

The lack of a docket control number on the papers filed in this matter violates the court's local rules. LBR 9014-1(c)(1) mandates the use of docket control numbers to be used on each document filed with the bankruptcy court in this district, including proofs of service.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the objection is continued to July 13, 2021, at 9:00 a.m. No later than June 29, 2021, the creditor shall serve the objection and provide all parties written notice of the continued hearing on this matter. The creditor shall file a certificate of service.

12. [21-21334](#)-A-13 **IN RE: DANIEL LUPINA**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
5-19-2021 [\[19\]](#)

MIKALAH LIVIAKIS/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. § 1325(a)(6)

11 U.S.C. § 1325(a)(6) requires that a chapter 13 plan be feasible, and that the debtor is able to comply with its terms. Here, the debtor stated he is the sole owner of property located at 9175

Pebble Canyon Lane, Fair Oaks, CA 95628. However, per proof of claim filed by Wells Fargo Bank, N.A. (Claim No. 3-1), the property is a joint tenancy with Kelly K. Williams. The debtor stated there is an ongoing litigation on the matter regarding a complaint for Partition by Sale of Real Property and Declaratory Relief, ECF No. 1. The ongoing litigation will cause the debtor moving expenses. The debtor did not show ability to pay under the plan given his financial circumstances. 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.

13. [20-23635](#)-A-13 **IN RE: CAROL ANDRESEN**
[SLE-3](#)

MOTION TO CONFIRM PLAN
5-5-2021 [\[86\]](#)

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

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by the movant, approved by the trustee

Subject: First Amended Chapter 13 Plan, May 5, 2021

DEFAULT OF RESPONDENT

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

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. [16-26242](#)-A-13 **IN RE: STEVEN/LINDA MAYNERICH**
[PGM-6](#)

MOTION TO REFINANCE
5-25-2021 [[112](#)]

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

Tentative Ruling

Motion: Approve New Debt [Refinance Mortgage Loan]

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

Disposition: Granted

Order: Prepared by moving party

Refinance mortgage loan sought: \$2,558.00/month for 132 months, then \$2,287.00 for remaining term of loan; 3.25% fixed interest; 30 year commitment period

Unopposed applications 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 to incur new debt to refinance an existing mortgage loan. Amended Schedules I and J have been filed, ECF No. 117, 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 court will grant the motion and approve the debtor's incurring of this new debt. The trustee shall issue a demand in an amount to pay all creditors in full pursuant to the debtor's confirmed plan. Any excess of funds over and above the amount in the trustee's demand shall be disbursed directly to the debtor.

15. [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

Final Ruling

Since the movant requested the court to drop this matter, ECF No. 51, the court will drop this matter from the calendar as moot. The court will issue a civil minute order.

16. [20-24343](#)-A-13 **IN RE: JULIE/PHIL COVELL**
[PGM-2](#)

MOTION TO MODIFY PLAN
5-11-2021 [\[39\]](#)

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

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by movant, approved by the trustee

Subject: First Amended Chapter 13 Plan, May 11, 2021

DEFAULT OF RESPONDENT

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

CHAPTER 13 PLAN MODIFICATION

Chapter 13 plan modification is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. "[T]he only limits on modification are those set forth in the language of the Code itself, coupled with the bankruptcy judge's discretion and good judgment in

reviewing the motion to modify.” *In re Powers*, 202 B.R. 618, 622 (B.A.P. 9th Cir. 1996).

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

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

17. [21-21347](#)-A-13 **IN RE: ALSESTER COLEMAN**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
5-26-2021 [\[16\]](#)

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. § 341

The debtor has failed to appear at a § 341 meeting of creditors held on May 20, 2021. See 11 U.S.C. §§ 341, 343. The meeting has been continued to June 17, 2021.

11 U.S.C. § 1325(a)(6)

Under 11 U.S.C. § 1325(a)(6), a chapter 13 plan must be feasible, and the debtor must show ability to comply with its terms. Here the debtor is delinquent \$1,400.00. To date, the debtor has paid \$0.00 under the plan. In addition, creditor Platinum Loan Servicing, Inc. (Class 1 creditor) joined the trustee's objection, ECF No. 20, stating the debtor made no post-petition mortgage payments to the creditor. The debtor therefore failed to show the plan is feasible or that he is able to comply with its terms.

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.

18. [19-26149](#)-A-13 **IN RE: SALLY DAVIDSON**
[DPC-3](#)

CONTINUED MOTION TO DISMISS CASE
2-3-2021 [\[52\]](#)

JEFFREY MEISNER/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Since the trustee requested the court to drop this matter if the court grants the debtor's motion to modify plan, ECF No. 70, and since the court has granted said motion to modify, the court will drop this matter from the calendar as moot. The court will issue a civil minute order.

19. [19-26149](#)-A-13 **IN RE: SALLY DAVIDSON**
[JMM-3](#)

MOTION TO MODIFY PLAN
5-11-2021 [\[84\]](#)

JEFFREY MEISNER/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by movant, approved by the trustee

Subject: Second Amended Chapter 13 Plan, May 11, 2021

DEFAULT OF RESPONDENT

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

CHAPTER 13 PLAN MODIFICATION

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

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

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

20. [21-21752](#)-A-13 **IN RE: DONNA CAMPOS**
[MOH-1](#)

MOTION TO VALUE COLLATERAL OF ONEMAIN FINANCIAL GROUP, LLC
6-1-2021 [\[16\]](#)

MICHAEL HAYS/ATTY. FOR DBT.

No Ruling

21. [21-20956](#)-A-13 **IN RE: JON HILL**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
5-26-2021 [\[38\]](#)

GEORGE BURKE/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.

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. § 1325(a)(6)

Under 11 U.S.C. § 1325(a)(6), a chapter 13 plan must be feasible and the debtor must show ability to comply with its terms.

Delinquency

Here the debtor is delinquent \$1,644.00. The debtor therefore failed to show the plan is feasible or that he is able to comply with its terms.

Plan Length

Here, the plan does not state a length. Plan, § 2.03, ECF No. 27. The debtor has not made clear the proposed length of the plan and therefore hasn't shown ability to comply with the terms of a feasible plan.

11 U.S.C. § 1325(b)

The debtor hasn't shown that he satisfied the best efforts test under 11 U.S.C. § 1325(b).

Means Test

The debtor is above median income and shows \$352.05 of calculated monthly disposable income on Form 122C-2, ECF No. 24, which would be \$21,123.00 over 60 months. The plan proposes no less than 25% to unsecured creditors on an estimated \$60,100.00, which would be \$15,025.00. The debtor hasn't shown his best efforts in this regard.

More Income

The debtor's calculated monthly disposable income does not include income the debtor received as bonuses totaling \$4,376.18 to date.

Tax Expenses Overstated

The calculated monthly disposable income deducts \$1,954.00 for taxes, ECF No. 24. The debtor's total 2020 federal income tax was \$11,636.00, which is less than \$1,000.00 per month. The tax appears overstated.

Retirement Expenses

The monthly disposable income deducts \$746.00 for involuntary deductions required by the debtor's job, ECF No. 24. Schedule I shows \$478.00 mandatory monthly contribution and no voluntary contribution or required retirement loan payment. Schedule J shows no mandatory contribution and \$516.44 for a required repayment of a retirement loan, ECF No. 33. The debtor admitted at the Meeting of Creditors that his retirement loan will be paid off in the next 12 months. The debtor appears to have contributed \$1,751.00 to 401(k) contributions and \$1,153.32 to 401(k) loan deductions as of March 31, 2021. However, the debtor did not prove that these contributions are mandatory for the next 60 months.

For the foregoing reasons, 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.

22. [18-21957](#)-A-13 **IN RE: WILLIAM AMARAL**
[PGM-10](#)

MOTION TO DISBURSE FUNDS FROM SALE OF REAL PROPERTY
5-31-2021 [[192](#)]

PETER MACALUSO/ATTY. FOR DBT.

No Ruling

23. [21-21362](#)-A-13 **IN RE: MARVIN COMBS**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
5-26-2021 [[15](#)]

MICHAEL BENAVIDES/ATTY. FOR DBT.

Final Ruling

Since the trustee requested the court to drop this objection, ECF No. 21, the court will drop this motion from the calendar as moot.

24. [16-20664](#)-A-13 **IN RE: RICHARD/ROBERTA BLAKE**
[ALF-4](#)

MOTION TO WAIVE SECTION 1328 CERTIFICATE REQUIREMENT,
CONTINUE CASE ADMINISTRATION, AS TO JOINT DEBTOR
5-11-2021 [\[63\]](#)

ASHLEY AMERIO/ATTY. FOR DBT.

Final Ruling

Motion: Substitution of Representative, Continued Administration,
Waiver of Certifications

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

Disposition: Granted

Order: Civil minute order

Richard Edward Blake prays for substitution of representative,
continued administration, and waiver of the § 1328 certification for
his now deceased spouse Roberta Lynn Blake.

DEFAULT

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).

DISCUSSION

Suggestion of Death

When a chapter 13 debtor dies, counsel for the debtor shall file a
Suggestion of Death.

Notice of Death. In a bankruptcy case which has not been
closed, a **Notice of Death of the debtor [Fed. R. Civ. P.
25(a), Fed. R. Bankr. P. 7025] shall be filed within
sixty (60) days of the death of a debtor by the counsel
for the deceased debtor or the person who intends to be
appointed as the representative for or successor to a
deceased debtor.** The Notice of Death shall be served on
the trustee, U.S. Trustee, and all other parties in
interest. **A copy of the death certificate (redacted as
appropriate) shall be filed as an exhibit to the Notice
of Death.**

LBR 1016-1(a) (emphasis added); see also, Fed. R. Civ. P. 25(a),
incorporated by Fed. R. Bank. P. 7025, 9014(c).

Here, the decedent Roberta Lynn Blake passed away on May 11, 2019. Although this motion was filed over 60 days after her passing, the untimeliness is not dispositive against granting the movant relief.

Substitution of Representative

Upon the death of the debtor, a personal representative for the debtor must be substituted as the real party in interest.

An action must be prosecuted in the name of the real party in interest. The following may sue in their own names without joining the person for whose benefit the action is brought: (A) an executor; (B) an administrator; (C) a guardian; (D) a bailee; (E) a trustee of an express trust; (F) a party with whom or in whose name a contract has been made for another's benefit; and (G) a party authorized by statute.

Fed. R. Civ. P. 17(a), *incorporated by* Fed. R. Bankr. P. 7017, 9014(c) (emphasis added).

Where the debtor dies during the administration of a chapter 7 case, the action is not abated, and administration shall continue. Fed. R. Bankr. P. 1016. But a representative for the now deceased debtor needs to be appointed. And that appointment process is implemented by Rule 25(a).

If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.

Fed. R. Civ. P. 25, *incorporated by* Fed. R. Bankr. P. 7025, 9014(c) and LBR 1016-1(a).

The surviving debtor Richard Edward Blake requests to be nominated as representative or successor to the decedent debtor. Since this motion has been made on the day the Notice of Death was filed, the court will grant the surviving debtor's request to be the decedent debtor's representative.

Continued Administration

Continued administration on behalf of a deceased chapter 13 debtor is discretionary.

Death or incompetency of the debtor shall not abate a liquidation case under chapter 7 of the Code. In such event the estate shall be administered and the case concluded in the same manner, so far as possible, as though the death or incompetency had not occurred. **If a reorganization, family farmer's debt adjustment, or individual's debt adjustment case is pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration**

is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred.

Fed. R. Bankr. P. 1016 (emphasis added).

The surviving debtor's income and expenses does not change, as the decedent did not contribute any household income towards the plan payment while alive. The surviving spouse completed all requested plan payments. The court will allow continued administration of this case.

WAIVER OF § 1328 CERTIFICATIONS

The motion requests a waiver of the requirement to complete and file § 1328 certifications, including certifications concerning domestic support obligations, prior bankruptcy discharges, exemptions exceeding the amount stated in § 522(q)(1) and pending criminal or civil proceedings described in § 522(q)(1)(A) and (B). These certifications are generally required for debtors by § 1328(a) and Local Bankruptcy Rule 5009-1(b) and (c). The court will waive the requirement that the deceased debtor file certifications concerning compliance with § 1328, including Forms EDC 3-190 and EDC 3-191 required under LBR 5009-1.

CIVIL MINUTE ORDER

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

Richard Edward Blake's motion has been presented to the court. Having entered the default of the respondents and 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 the motion is granted; and

IT IS FURTHER ORDERED that (1) Richard Edward Blake is the representative of Roberta Lynn Blake and is substituted in her place and stead; (2) continued administration is appropriate; (3) as to Roberta Lynn Blake, the certifications required by 11 U.S.C. § 1328 are waived.

25. [21-20167](#)-A-13 **IN RE: HARLAN/CHARLOTTE CONFER**
[BHS-1](#)

CONTINUED 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

Final Ruling

The matter resolved by memorandum decision and order, the hearing is removed from calendar.

26. [21-21279](#)-A-13 **IN RE: SUSAN STRAUB**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
5-20-2021 [[15](#)]

MARY TERRANELLA/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

27. [17-20782](#)-A-13 **IN RE: GINA SEIDEL**
[RWH-1](#)

MOTION FOR ORDER APPROVING PAYMENT DEFERRAL AGREEMENT WITH
WELLS FARGO BANK, N.A.
5-28-2021 [[26](#)]

RONALD HOLLAND/ATTY. FOR DBT.

No Ruling

28. [20-20084](#)-A-13 **IN RE: BERNADETTE TEDING**
[RPZ-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-18-2021 [[83](#)]

RICHARD JARE/ATTY. FOR DBT.
ROBERT ZAHRADKA/ATTY. FOR MV.
DEUTSCHE BANK NATIONAL TRUST COMPANY VS.
RESPONSIVE PLEADING

No Ruling

29. [21-20987](#)-A-13 **IN RE: JENNIFER BUTTERFIELD**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
5-20-2021 [\[24\]](#)

MICHAEL HAYS/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. § 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). At the meeting of creditors the debtor admitted she did not file her 2018 and 2020 tax returns. So far, the debtor did not show he complied with § 1308.

11 U.S.C. § 1325(b)

The debtor did not show that her plan complies with the best efforts test under 11 U.S.C. § 1325(b). The debtor's Schedule J shows an allocation of \$650.00 for withholding taxes for the Franchise Tax Board and the Internal Revenue Service. The debtor admitted at the Meeting of the Creditors that her current monthly income and tax obligations are the same as they were in 2019 (\$300/month). If the tax expenses were adjusted to reflect the debtor's current tax expenses on Schedule J, the debtor would have an additional \$350.00 income. The debtor has not yet amended Schedule J. The debtor hasn't shown that she is projecting all disposable income into plan payments.

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.

30. [21-20488](#)-A-13 **IN RE: KARL/PAULA LEET**
[JSO-1](#)

MOTION TO CONFIRM PLAN
5-6-2021 [\[18\]](#)

JEFFREY OGILVIE/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by the movant, approved by the trustee

Subject: First Amended Chapter 13 Plan, May 6, 2021

DEFAULT OF RESPONDENT

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

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.