

**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: WEDNESDAY
DATE: JULY 6, 2022
CALENDAR: 9:00 A.M. CHAPTER 13 CASES

RULINGS

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

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

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

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

CHANGES TO PREVIOUSLY PUBLISHED RULINGS

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

ERRORS IN RULINGS

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

1. [22-21008](#)-A-13 **IN RE: CYNTHIA PAYSINGER**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK,
CHAPTER 13 TRUSTEE
6-15-2022 [\[23\]](#)

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 in part/overruled in part and confirmation denied

Order: Civil minute order

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

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

PLAN FEASIBILITY

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

Multiple Bankruptcy Filings

The trustee contends that the debtor's multiple bankruptcy filings (four Chapter 13 cases between 2014-2018) raises the suspicion that the feasibility of the present case is speculative.

The debtor's most recently filed chapter 13, Case No. 2018-23464, E.D. Cal. Bankr. (2018), was filed on June 1, 2018, four years before the instant case. Before the previous case was dismissed on March 10, 2022, the debtor confirmed and performed a plan for nearly four years, although the court notes multiple modifications of the chapter 13 plan. Absent a more detailed factual argument and analysis proffered by the trustee, the court does not find the four previous cases by virtue of their mere existence, impact the feasibility of the instant case. The court will overrule this portion of the trustee's objection.

2016 Taxes

The Internal Revenue Service filed an amended claim (Claim No. 2) showing an unsecured obligation, totaling \$2,540.69, is owed for the 2016 tax year. The trustee correctly states that the debtor is not required to file a 2016 Tax Return to obtain confirmation of a plan in this case. The proposed plan calls for 0% to be paid to unsecured creditors. The trustee has not shown how the filing of the unsecured claim by the Internal Revenue Service, or whether the debtor files a 2016 tax return, impacts the *feasibility* of the proposed plan. If the obligation to the Internal Revenue Service is not paid through the plan it will survive the bankruptcy. The court will overrule this portion of the trustee's objection.

Income Information Does Not Support Feasibility

The debtor has provided the trustee with required pay advices from employment at the National Asian Pacific Center on Aging. The trustee's review of the pay advices shows that the debtor does not have sufficient monthly income to fund the plan. The amounts in the pay advices are approximately \$235.00 less per month than what the debtor has proffered in Schedule I and the debtor has not provided evidence explaining or reconciling the differences in income. The plan is not feasible under 11 U.S.C. § 1325(a)(6). The court will sustain this portion of the trustee's objection.

Third Party Payments

The feasibility of the proposed plan is contingent upon the receipt of payments by a third party, the debtor's son, in the monthly amount of \$830.00. See, Schedule I, ECF No. 1. While the debtor has provided the trustee with copies of her son's pay advices, there is no declaration or other evidence indicating her son's ability and willingness to contribute such a significant sum into the plan each month. The plan is not feasible without this additional payment by the debtor's son. The court sustains this portion of 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 in part and overruled in part. The court denies confirmation of the chapter 13 plan.

2. [22-21111](#)-A-13 **IN RE: VALERIE RAMIREZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
6-7-2022 [\[32\]](#)

PETER MACALUSO/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.

3. [22-21111](#)-A-13 **IN RE: VALERIE RAMIREZ** [DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
6-15-2022 [\[38\]](#)

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 in part/overruled in part, and confirmation denied

Order: Civil minute order

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

schedule. Absent such opposition, the court will adopt this tentative ruling.

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

REDUCTION OF COLLATERAL VALUE WITHOUT A MOTION

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

The trustee contends that the plan is not feasible unless the debtor successfully values the collateral of Fast Auto Loans, Inc. and Titlemax of California, Inc. The debtor has filed the required motions (PGM-2 and PGM-3); the court has granted each of the motions. The court will overrule this portion of the trustee's objection.

LIQUIDATION

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

. . .

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

. . .

11 U.S.C. § 1325(a)(4).

Under California exemption law, debtors may elect either the set of special exemptions available only to debtors in bankruptcy under section 703.140(b) of the California Code of Civil Procedure ("special bankruptcy exemptions") or they may elect the regular set of exemptions under Chapter 4 of Part 2, Title 9, Division 2 of the California Code of Civil Procedure excluding the exemptions under section 703.140(b) ("regular non-bankruptcy exemptions"). See Cal. Civ. Proc. Code § 703.140(a). But they may not elect both. See Cal. Civ. Proc. Code § 703.140(a)(1)-(3).

The trustee objects to confirmation contending that the plan may not pass liquidation as the debtor has filed a Schedule C with claimed exemptions from both the C.C.P. § 703 and 704 exemption statutes. The trustee correctly points out that the debtor must elect which

exemption statutes to use in claiming property exempt. Without a properly amended Schedule C the trustee cannot accurately perform his calculation of the liquidation analysis and make a recommendation for confirmation of the plan.

The debtor filed an Amended Schedule C on June 21, 2022, ECF No. 43. Unfortunately, the amended schedule suffers from the same deficiency as the previously filed schedule C in that it claims exemptions from each of the California statutory schemes.

Debtor Reply and Further Amendment

On June 28, 2022, the debtor filed a reply stating that she had filed a further Amended Schedule C. The Amended Schedule claims exemptions pursuant to the C.C.P. § 704 exemption statutes, correcting the court's concerns regarding mixed exemptions. See ECF No. 45.

It is unclear, however, if this entirely resolves the liquidation issue raised by the trustee. Absent confirmation from the trustee that the liquidation issue is fully resolved the court will sustain the objection.

TAX RETURNS

The trustee did not receive tax returns from the debtor as required by 11 U.S.C. § 521(e)(2)(A) and Fed. R. Bankr. P. 4002(b)(3). The debtor testified at the meeting of creditors that she is not required to file tax returns. The debtor filed a Declaration on June 21, 2022, stating that she is not required to file income tax returns. See ECF No. 42. The court will overrule this portion of the trustee's objection to confirmation.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:
Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

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

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

4. [22-21111](#)-A-13 **IN RE: VALERIE RAMIREZ**
[PGM-2](#)

MOTION TO VALUE COLLATERAL OF TITLEMAX OF CALIFORNIA, INC.
5-27-2022 [\[27\]](#)

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

Final Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle]

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

Disposition: Granted

Order: Civil minute order

Subject: 2005 Toyota Tacoma

Value: \$6,000.00

Security: Non purchase money

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

The debtor seeks an order valuing the collateral of Titlemax of California, Inc., a 2005 Toyota Tacoma, at \$6,000.00.

VALUATION OF COLLATERAL

Chapter 13 debtors may value collateral by noticed motion. Fed. R. Bankr. P. 3012. Section 506(a) of the Bankruptcy Code provides, "An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property" and is unsecured as to the remainder. 11 U.S.C. § 506(a). For personal property, value is defined as "replacement value" on the date of the petition. *Id.* § 506(a)(2). For "property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." *Id.* The costs of sale or marketing may not be deducted. *Id.*

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

In this case, the debtor seeks to value collateral consisting of a motor vehicle described as a 2005 Toyota Tacoma. The debt owed to the respondent is not secured by a purchase money security interest. See 11 U.S.C. § 1325(a) (hanging paragraph). The court values the vehicle at \$6,000.00.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The personal property collateral described as a 2005 Toyota Tacoma has a value of \$6,000.00. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$6,000.00 equal to the value of the collateral that is unencumbered by senior liens. The respondent has a general unsecured claim for the balance of the claim.

5. [22-21111](#)-A-13 **IN RE: VALERIE RAMIREZ**
[PGM-3](#)

MOTION TO VALUE COLLATERAL OF FAST AUTO LOANS, INC.
5-27-2022 [\[22\]](#)

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

Final Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle]

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

Disposition: Granted

Order: Civil minute order

Subject: 2016 Honda Civic

Value: \$6,500.00

Security: Non purchase money

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

The debtor seeks an order valuing the collateral of Fast Auto Loans, Inc., a 2016 Honda Civic at \$6,500.00.

VALUATION OF COLLATERAL

Chapter 13 debtors may value collateral by noticed motion. Fed. R. Bankr. P. 3012. Section 506(a) of the Bankruptcy Code provides, "An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property" and is unsecured as to the remainder. 11 U.S.C. § 506(a). For personal property, value is defined as "replacement value" on the date of the petition. *Id.* § 506(a)(2). For "property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." *Id.* The costs of sale or marketing may not be deducted. *Id.*

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

In this case, the debtor seeks to value collateral consisting of a motor vehicle described as a 2016 Honda Civic. The debt owed to the respondent is not secured by a purchase money security interest. See 11 U.S.C. § 1325(a) (hanging paragraph). The court values the vehicle at \$6,500.00.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The personal property collateral described as a 2016 Honda Civic has a value of \$6,500.00. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$6,500.00 equal to the value of the collateral that is unencumbered by senior liens. The respondent has a general unsecured claim for the balance of the claim.

6. [21-23812](#)-A-13 **IN RE: MAI TRANG LE**
[PGM-3](#)

MOTION TO CONFIRM PLAN
5-27-2022 [\[72\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

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

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

LIQUIDATION

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

. . . .

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

. . . .

11 U.S.C. § 1325(a)(4).

The chapter 13 trustee objects to confirmation indicating that he is unable to determine if the plan passes the liquidation test. The debtor has failed to amend schedules to provide the value for a 2010 Lexus automobile. The trustee has raised this objection to confirmation twice before as follows.

The Debtor has also scheduled a 2010 Lexus, with a value of "Notice Only," (Page 4, #3.1) The Debtor admitted at the First Meeting Creditors, held on

December 16, 2021, that she owns and drives the 2010 Lexus.

Objection to Confirmation, ECF No. 26, 4:6-10.

The Debtor has also has not added the 2010 Lexus to Schedules B or C, which continues to suggests (sic) that there is a potential higher amount for non-exempt property if a value for this vehicle were included in the calcuation (sic).

Opposition to Motion to Confirm, ECF No. 53, 2:7-9.

Despite the trustee's objections, and subsequent orders of this court, the debtor has proposed another plan without amending Schedules A/B to provide a value for the Lexus. The motion will be denied.

PLAN FEASIBILITY

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

Failure to Provide Financial/Business Documents

The debtor has failed to provide the trustee with required or requested documents. See 11 U.S.C. § 521(a)(3)-(4).

The trustee requested that the debtor provide him with documents which are required under § 521 of the Bankruptcy Code and with additional documents which the trustee required to properly prepare for the 341 meeting of creditors. The debtor(s) failed to produce the following documents: six (6) months of individual Profit and Loss statements for debtor's E-bay business and her spouse's Smog Zone business; two (2) years of complete Internal Revenue Service tax returns.

While the debtor has provided 2019 and 2020 tax returns, both are incomplete, and fail to include Schedule C, if applicable. If Schedule C is not applicable, then the debtor has failed to provide corporate, or partnership returns for either business.

The failure to provide income information makes it impossible for the chapter 13 trustee to accurately assess the debtor's ability to perform the proposed plan. As such, the trustee cannot represent that the plan, in his estimation is feasible, under 11 U.S.C. § 1325(a)(6).

The court finds that the proposed plan is not feasible.

GOOD FAITH

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

Failure to File Accurate and Complete Schedules

The debtor is required to propose a plan in good faith under 11 U.S.C. § 1325(a)(3). Filing inaccurate schedules and statements and failing to promptly amend documents does not evidence that the plan is proposed in good faith.

The trustee objects because the debtor has failed to amend the Statement of Financial Affairs to properly identify businesses she or her spouse have owned or operated in the last four (4) years. The court also notes that the debtor's failure to properly amend Schedule A/B to reflect the value of the Lexus does show the plan is proposed in good faith. The first objection to confirmation was sustained on January 19, 2022. The debtor has had ample opportunity to update her schedules. The court finds the plan is not proposed in good faith.

DEBTOR REPLY

On June 28, 2022, the debtor filed a reply requesting a two-week continuance of this matter to provide the documents to the trustee, file amended schedules and statements and resolve the trustee's opposition. See ECF No. 92. The court denies the debtor's request for a continuance. The debtor's failure to provide documents to the trustee and failure to amend schedules and statements have been discussed at length in this ruling. The trustee's original objection to confirmation was sustained on January 19, 2022. It has been 5 months since the hearing and the debtor has had ample time to provide the information requested and amend the bankruptcy schedules and statements. At the latest this evidence should have been provided to the trustee upon the filing of the instant motion as part of the debtor's prima facie case for confirmation. The court

reiterates its finding that the plan has not been proposed in good faith.

The court will deny the motion.

CIVIL MINUTE ORDER

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

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

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

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

7. [22-20019](#)-A-13 **IN RE: LILLIAN DEANER**
[DPC-2](#)

MOTION TO DISMISS CASE
6-2-2022 [\[38\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: June 22, 2022

Opposition Filed: Unopposed

Cause: 11 U.S.C. § 1307(c)(1) - Plan Delinquency

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the debtor's chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. Payments under the plan are delinquent in the amount of \$7,121.24 with a further payment of \$3,180.31 due June 25, 2022.

The trustee further contends that the failure to file an amended plan following a sustained objection to confirmation on March 15, 2022, constitutes unreasonable delay which is prejudicial to creditors under 11 U.S.C. § 1307(c)(1).

As a courtesy to the court debtor's counsel filed a response indicating that he has no basis to oppose the trustee's motion, ECF No. 42.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted because of the delinquency under the chapter 13 plan in this case. The court hereby dismisses this case.

8. [22-20820](#)-A-13 **IN RE: MARK JENSEN**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
6-8-2022 [\[31\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.
DEBTOR DISMISSED: 06/13/2022

Final Ruling

This case was dismissed on June 13, 2022. This Order to Show Cause is Discharged. No appearances are required.

9. [22-20820](#)-A-13 **IN RE: MARK JENSEN**
[DPC-2](#)

MOTION TO DISMISS CASE
6-2-2022 [\[27\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.
DEBTOR DISMISSED: 06/13/2022

Final Ruling

This case was dismissed on June 13, 2022. This motion is removed from the calendar as moot. No appearances are required.

10. [22-20721](#)-A-13 **IN RE: KEITH/LAURA FARLEY**
[CLB-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-6-2022 [\[31\]](#)

CATHERINE KING/ATTY. FOR DBT.
CHAD BUTLER/ATTY. FOR MV.
U.S. BANK NATIONAL ASSOCIATION VS.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2009 Four Winds M-25c

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court

considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Movant seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a). The proposed amended plan, ECF No. 15, calls for the surrender of the collateral at Section 3.09.

RELIEF FROM STAY

Section 362(d)(1) authorizes stay relief for cause shown. 11 U.S.C. § 362(d)(1). The debtor is obligated to make debt payments to the moving party pursuant to a loan contract that is secured by a security interest in the debtor's vehicle described above. The debtor has defaulted on the loan as 1 post-petition payment is past due. The total post-petition delinquency is approximately \$437.70.

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

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 2009 Four Winds M25-c, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

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

11. [17-20031](#)-A-13 **IN RE: JAMES MURRAY**
[RS-7](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FINANCIAL
RELIEF LAW CENTER, APC FOR RICHARD STURDEVANT, DEBTOR'S
ATTORNEY(S)
5-31-2022 [[152](#)]

RICHARD STURDEVANT/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Application: Allowance of Additional Compensation

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

Disposition: Approved

Order: Civil minute order

Number of Requests for Additional Compensation: First

Additional Compensation Requested: \$991.39

Additional Cost Reimbursement Requested: \$0

COMPENSATION AND EXPENSES

In this chapter 13 case, Richard Sturdevant, attorney for the debtor(s), has applied for an allowance of additional compensation. The applicant requests that the court allow compensation in the amount of \$991.39. The chapter 13 trustee has filed a non-opposition to the motion, ECF No. 157. The debtor has filed a declaration in support of the motion and consented to the amount of fees requested by counsel. See ECF No. 154.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a trustee, examiner or professional person employed under § 327 or § 1103 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

SUBSTANTIAL AND UNANTICIPATED POST-CONFIRMATION WORK

The applicant filed Form EDC 3-096, *Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys*, opting in to the no-look fee approved through plan confirmation. The plan also shows the attorney opted in pursuant to Local Bankruptcy Rule 2016-1(c). The applicant now seeks additional fees, arguing that the no-look fee is insufficient to fairly compensate the applicant. However, in cases in which the fixed, no-look fee has been approved as part of a confirmed plan, an applicant requesting additional compensation must show that substantial and unanticipated post-confirmation work was necessary. See LBR 2016-1(c).

In this case the applicant successfully modified the chapter 13 plan resolving the issue of delinquent homeowner association fees. The trustee has indicated that he is currently holding fees sufficient

to compensate counsel through the chapter 13 plan and that all unsecured creditors have been paid in full through the plan.

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis and allow additional compensation of \$991.39.

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.

Richard Sturdevant's application for allowance of additional compensation under LBR 2016-1(c) 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 application,

IT IS ORDERED that the application is approved. The court allows the additional compensation in the amount of \$991.39. The court authorizes the fees to be paid through the plan by the chapter 13 trustee.

12. [22-20331](#)-A-13 **IN RE: SAMSON GALLOWAY**
[DPC-2](#)

MOTION TO DISMISS CASE
6-2-2022 [\[28\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: June 22, 2022

Opposition Filed: Unopposed

Cause: 11 U.S.C. § 1307(c)(1) - Plan Delinquency

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the debtor's chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. Payments under the plan are delinquent in the amount of \$1,500.00 with a further payment of \$1,500.00 due June 25, 2022.

As a courtesy to the court the counsel for the debtor filed a response to the motion indicating that he has no basis to oppose the trustee's motion, ECF No. 32.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted because of the delinquency under the chapter 13 plan in this case. The court hereby dismisses this case.

13. [22-20743](#)-A-13 **IN RE: SILVIA RAMIREZ**
[DPC-2](#)

MOTION TO DISMISS CASE
6-2-2022 [\[30\]](#)

CARL GUSTAFSON/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: June 22, 2022

Opposition Filed: Unopposed

Cause: 11 U.S.C. § 1307(c)(1) - Plan Delinquency

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the debtor's chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. Payments under the plan are delinquent in the amount of \$4,900.00 with a further payment of \$2,450.00 due June 25, 2022.

The trustee further contends that the debtor has failed to provide the trustee with pay advices from January 27, 2022 through March 29, 2022, which were due seven days prior to the Meeting of Creditors. The court finds the failure to provide the documents unreasonable delay which is prejudicial to creditors under 11 U.S.C. § 1307(c)(1).

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted because of the delinquency under the chapter 13 plan in this case. The court hereby dismisses this case.

14. [19-20544](#)-A-13 **IN RE: JOSE/MAUREEN MARIANO**
[WW-5](#)

MOTION TO SELL
6-7-2022 [\[77\]](#)

MARK WOLFF/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

No Ruling

15. [22-20063](#)-A-13 **IN RE: NATHANIEL SOBAYO**
[DPC-2](#)

MOTION TO DISMISS CASE
6-2-2022 [\[56\]](#)

MARK SHMORGON/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

16. [22-20063](#)-A-13 **IN RE: NATHANIEL SOBAYO**
[MS-1](#)

MOTION BY MARK SHMORGON TO WITHDRAW AS ATTORNEY
6-15-2022 [\[64\]](#)

MARK SHMORGON/ATTY. FOR DBT.

No Ruling

17. [21-23868](#)-A-13 **IN RE: BRANDON/REBECA DOMINGUES HENDERSON**
[CYB-3](#)

CONTINUED MOTION TO CONFIRM PLAN
4-18-2022 [\[49\]](#)

CANDACE BROOKS/ATTY. FOR DBT.

Final Ruling

Motion: Confirm Chapter 13 Plan

Notice: Continued from May 24, 2022

Disposition: Granted

Order: Prepared by the movant, approved by the trustee

Subject: First Amended Chapter 13 Plan, filed April 18, 2022

DEFAULT OF RESPONDENT

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

The hearing on this matter was continued to allow the debtors to obtain an order avoiding the lien of Employment Development Department. The motion to avoid lien (CYB-6) has been granted.

At the prior hearing the court indicated that "[i]f the trustee does not file a response indicating further issues in this case not later than 14 days prior to the continued hearing, and the debtors' motion to avoid lien is granted, the trustee consents to the court granting the motion to confirm plan without further notice or hearing." See Civil Minutes, ECF No. 102. No further objections have been brought by the trustee.

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 debtors have sustained that burden, and the court will approve confirmation of the plan.

18. [21-23868](#)-A-13 **IN RE: BRANDON/REBECA DOMINGUES HENDERSON**
[CYB-6](#)

MOTION TO AVOID LIEN OF EMPLOYMENT DEVELOPMENT DEPARTMENT
6-6-2022 [\[106\]](#)

CANDACE BROOKS/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

Subject: Personal Property of the Debtors

Judicial Lien: \$6,357.06

All Other Liens: \$0

Exemption: \$4,838.00

Value of Property: \$4,838.00

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

The debtors seek an order avoiding the judicial lien of Employment Development Department under 11 U.S.C. § 522(f). The respondent holds a judicial lien against all personal assets of the debtors. The debtors have listed, valued, and fully exempted their personal property assets in their bankruptcy schedules in the amount of \$4,838.00.

LIEN AVOIDANCE

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an

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

What constitutes a judicial lien is defined in § 101 of the Bankruptcy Code. "The term 'judicial lien' means lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding." 11 U.S.C. § 101.

The responding party's judicial lien, all other liens, and the exemption amount together exceed the property's value by an amount greater than or equal to the judicial lien. As a result, the responding party's judicial lien will be avoided entirely. The motion is granted.

19. [22-21072](#)-A-13 **IN RE: TOM/EVERLYN NELSON**
[APN-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY HARLEY-DAVIDSON CREDIT
CORP.
6-8-2022 [\[27\]](#)

RICHARD KWUN/ATTY. FOR DBT.
AUSTIN NAGEL/ATTY. FOR MV.

Final Ruling

The hearing on this matter has been resolved by the stipulation of the parties, ECF No. 46. The court has signed an order approving the stipulation, ECF No. 48. This matter will be removed from the calendar as moot. No appearances are required.

20. [22-21072](#)-A-13 **IN RE: TOM/EVERLYN NELSON**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK
6-14-2022 [\[38\]](#)

RICHARD KWUN/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 in part/overruled in part and confirmation denied

Order: Civil minute order

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

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

STUDENT LOAN TREATMENT IN THE PLAN

(b) Subject to subsections (a) and (c) of this section, the plan may--

(1) designate a class or classes of unsecured claims, as provided in section 1122 of this title, but may not discriminate unfairly against any class so designated; however, such plan may treat claims for a consumer debt of the debtor if an individual is liable on such consumer debt with the debtor differently than other unsecured claims. . . .

11 U.S.C. § 1322(b)(1).

The nonstandard provisions of the proposed plan indicate as follows: "[s]tudent loans claims shall not be paid. Class 7 does not include student loan claims." See Plan, ECF No. 3, Sections 7, 7.01.

The debtors have provided no legal basis for discriminating against the student loan obligations. Without further information justifying the proposed treatment, Section 1322(b)(1) requires that the student loan creditors should be paid in the same manner as the remaining unsecured creditors. The court will sustain this objection.

REDUCTION OF COLLATERAL VALUE WITHOUT A MOTION

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

In this case, the plan proposes to reduce One Main's Class 2 secured claim based on the value of the collateral securing such claim. The debtor has filed a motion to value the collateral of One Main (RK-1); and the court has granted the motion. The court will overrule this objection to confirmation.

PLAN FEASIBILITY

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

Plan Fails to Provide for All Claims

The trustee objects to confirmation indicating that secured claims have been filed by Ford Motor Credit Company (Claim No. 6) regarding a 2016 Ford Focus, and Harley-Davidson Credit Corp (Claim No. 8) regarding a 2017 FXDB Street Bob. The debtors' plan fails to provide for payment or surrender of the collateral for either claim. Debtors' Amended Schedule J does not provide for payment of any vehicles outside the plan, ECF No. 31. As the debtors have not stated their intentions regarding possession of the collateral or payment of the above claims the court cannot determine if the proposed plan is feasible under 11 U.S.C. § 1325(a)(6).

The treatment of the claim of Harley-Davidson Credit Corp has been resolved by stipulation of the parties, ECF No. 46. The court has signed an order approving the stipulation, ECF No. 48.

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 in part and overruled in part. The court denies confirmation of the chapter 13 plan.

21. [22-21072](#)-A-13 **IN RE: TOM/EVERLYN NELSON**
[RK-1](#)

MOTION TO VALUE COLLATERAL OF ONEMAIN FINANCIAL GROUP LLC
6-10-2022 [\[33\]](#)

RICHARD KWUN/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle]

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

Disposition: Granted

Order: Civil minute order

Subject: 2009 Suzuki GSZ motorcycle

Value: \$5,000.00

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

The debtors seek an order valuing the collateral of One Main Financial Group, LLC. The chapter 13 trustee filed an opposition to the motion contending that the debtors had failed to support the motion with a properly worded oath in the declaration, ECF No. 42. The joint debtor filed and served a supplemental declaration on June 22, 2022, ECF No. with the appropriate oath. The factual allegations are unchanged from the previous declaration filed. The respondent has not filed an opposition to the motion.

VALUATION OF COLLATERAL

Chapter 13 debtors may value collateral by noticed motion. Fed. R. Bankr. P. 3012. Section 506(a) of the Bankruptcy Code provides, "An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property" and is unsecured as to the remainder. 11 U.S.C. § 506(a). For personal property, value is defined as "replacement value" on the date of the petition. *Id.* § 506(a)(2). For "property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." *Id.* The costs of sale or marketing may not be deducted. *Id.*

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

In this case, the debtor seeks to value collateral consisting of a motor vehicle described as a 2009 Suzuki GSZ motorcycle. The debt secured by the vehicle was not incurred within the 910-day period preceding the date of the petition. The court values the vehicle at \$5,000.00.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The personal property collateral described as a 2009 Suzuki GSZ motorcycle has a value of \$5,000.00. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$5,000.00 equal to the value of the collateral that is unencumbered by senior liens. The respondent has a general unsecured claim for the balance of the claim.

22. [22-20277](#)-A-13 **IN RE: PAMELA AMBUNAN**
[DPC-2](#)

MOTION TO DISMISS CASE
6-2-2022 [\[44\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Continued to July 19, 2022, at 9:00 a.m.

Order: Civil minute order

Opposition Due: June 22, 2022

Opposition Filed: June 15, 2022 - timely

Motion to Modify Plan Filed: June 14, 2022 - timely

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) as the debtor has: 1) failed to provide documents to the trustee; and 2) failed to properly prosecute the chapter 13 case by filing an amended plan after the court sustained an objection to confirmation on April 5, 2022.

A modified plan has been timely filed and set for hearing in this case. The scheduled hearing on the modification is July 19, 2022, at 9:00 a.m. The court will continue the hearing on this motion to dismiss to coincide with the hearing on the plan modification. If the modification is disapproved, and the motion to dismiss has not been withdrawn or otherwise resolved, the court may dismiss the case at the continued hearing.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the chapter 13 trustee's motion to dismiss is continued to July 19, 2022, at 9:00 a.m.

IT IS FURTHER ORDERED that if the trustee elects to oppose the debtor's motion to modify, then not later than 14 days prior to the continued hearing date the trustee shall file a status report updating this motion to dismiss. The status report shall provide a concise list explaining the remaining issues in the motion to dismiss and indicate the amount of any plan delinquency. The status report shall be succinct and shall not consist of a cut and paste of the opposition filed by the trustee in response to a motion to amend or modify the debtor's plan.

23. [19-21082](#)-A-13 **IN RE: RONDELL DANIEL**
[DPC-3](#)

CONTINUED MOTION TO DISMISS CASE
4-5-2022 [\[143\]](#)

PETER MACALUSO/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

Notice: Continued from May 3, 2022

Disposition: Denied

Order: Civil minute order

The hearing on this motion was continued from May 3, 2022, to allow for hearing on the debtor's motion to modify the chapter 13 plan. The motion to modify, PGM-4, has been granted

The trustee has filed a status report, ECF No. 160, indicating that he no longer wishes to pursue his motion to dismiss.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is denied.

24. [19-21082](#)-A-13 **IN RE: RONDELL DANIEL**
[PGM-4](#)

MOTION TO MODIFY PLAN
6-1-2022 [\[153\]](#)

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); non-opposition filed by trustee

Disposition: Granted

Order: Prepared by movant, approved by the trustee

Subject: Third Modified Chapter 13 Plan, filed June 1, 2022

DEFAULT OF RESPONDENT

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

The debtor seeks an order approving the Third Modified Chapter 13 Plan. The chapter 13 trustee has filed a non-opposition to the motion. See ECF No. 158.

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.

25. [22-20983](#)-A-13 **IN RE: LAWRENCE BOUIE**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
6-15-2022 [\[17\]](#)

JAMES KEENAN/ATTY. FOR DBT.

Final Ruling

The debtor filed a motion to dismiss the bankruptcy case, ECF No. 21. The court signed an order dismissing the case on June 29, 2022, ECF No. 22. This matter will be removed from the calendar as moot. No appearances are required.

26. [22-21284](#)-A-13 **IN RE: LIGIA VO**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
6-3-2022 [\[16\]](#)

JOSEPH CANNING/ATTY. FOR DBT.
6/4/22 FILING FEE PAID \$313

Final Ruling

As the full filing fee has been paid, the order to show cause is discharged. The case will remain pending.

27. [20-24085](#)-A-13 **IN RE: GENEE FELTS-BOREN**
[WW-2](#)

MOTION TO SELL
6-15-2022 [\[65\]](#)

MARK WOLFF/ATTY. FOR DBT.

Final Ruling

This case has been transferred to Department E. The hearing on this matter has been rescheduled and will be heard before Chief Judge Ronald H. Sargis on July 12, 2022, at 2:00 p.m. in the United States Courthouse, 501 I Street, Sixth Floor, Department E, Courtroom 33, Sacramento, California.

28. [20-24085](#)-A-13 **IN RE: GENE FELTS-BOREN**
[WW-3](#)

MOTION TO EMPLOY REMAX GOLD NATOMAS AS REALTOR(S) AND/OR
MOTION FOR COMPENSATION FOR REMAX GOLD NATOMAS, REALTOR(S)
6-15-2022 [\[70\]](#)

MARK WOLFF/ATTY. FOR DBT.

Final Ruling

This case has been transferred to Department E. The hearing on this matter has been rescheduled and will be heard before Chief Judge Ronald H. Sargis on July 12, 2022, at 2:00 p.m. in the United States Courthouse, 501 I Street, Sixth Floor, Department E, Courtroom 33, Sacramento, California.

29. [22-21488](#)-A-13 **IN RE: CECILIA SMITH**
[PGM-1](#)

MOTION TO EXTEND AUTOMATIC STAY
6-21-2022 [\[11\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Tentative Ruling

Motion: Extend the Automatic Stay

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

Disposition: Granted

Order: Civil minute order

Prior Case: 2019-25608, E.D. Cal. Bankr. (2019)

Filed: September 15, 2019

Confirmed: February 13, 2020

Dismissed: May 6, 2022

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

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

EXTENSION OF THE STAY

Upon request of a party in interest, the court may extend the automatic stay where the debtor has had one previous bankruptcy case that was pending within the 1-year period prior to the filing of the current bankruptcy case but was dismissed. See 11 U.S.C. § 362(c)(3)(B). Procedurally, the automatic stay may be extended only "after notice and a hearing *completed* before the expiration of the

30-day period” after the filing of the petition in the later case. *Id.* (emphasis added). To extend the stay, the court must find that the filing of the *later case* is in good faith as to the creditors to be stayed, and the extension of the stay may be made subject to conditions or limitations the court may impose. *Id.*

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

CIVIL MINUTE ORDER

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

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

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

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

30. [22-20994](#)-A-13 **IN RE: ISAC/LORENA ALVAREZ**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
6-14-2022 [\[15\]](#)

JENNIFER LEE/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).

PLAN FEASIBILITY

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

Failure to Provide Financial/Business Documents

The debtors have failed to provide the trustee with required or requested documents. See 11 U.S.C. § 521(a)(3)-(4).

The trustee requested that the debtors provide him with documents which are required under § 521 of the Bankruptcy Code and with additional documents which the trustee required to properly prepare for the 341 meeting of creditors. The debtors failed to produce the following documents: the 2020 federal tax return; 5 additional months of profit and loss statements; (to compare against the business detailed statement); business license and copies of the declaration page as to liability insurance, vehicle insurance real and/or personal property insurance; completed business questionnaire which was previously mailed to the debtor.

The failure to provide income information makes it impossible for the chapter 13 trustee to accurately assess the debtors' ability to perform the proposed plan. As such, the trustee cannot represent that the plan, in his estimation is feasible, under 11 U.S.C. § 1325(a)(6).

Schedules I and J

The paystubs provided to the Trustee for Lorena Alvarez, reflect a 401K deduction of approximately \$596.00 per month. Schedule I fails to include this expense. With the additional monthly deduction, the debtors cannot afford to make the proposed plan payment and the plan is not feasible.

The court will sustain the trustee's feasibility objections.

LIQUIDATION

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

. . . .

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

. . . .

11 U.S.C. § 1325(a)(4).

The debtors admitted at the meeting of creditors that 2021 federal and state tax refunds were mailed to them in the form of a check and received prior to filing the bankruptcy. The debtors failed to list the refunds totaling approximately \$12,000.00 on Schedule A/B. Because the assets have not been properly scheduled the trustee cannot complete his calculation of the liquidation analysis required under 11 U.S.C. §1325(a)(4) or determine if the plan is proposed in good faith under 11 U.S.C. § 1325(a)(3). The court will sustain the objection.

LBR 9004-1(c)

(c) Signatures Generally. All pleadings and non-evidentiary documents shall be signed by the individual attorney for the party presenting them, or by the party involved if that party is appearing *in propria persona*. Affidavits and certifications shall be signed by the person offering the evidentiary material contained in the document. The name of the person signing the document shall be typed underneath the signature.

LBR-9004-1(c).

The debtors have filed and proposed a plan, ECF No. 3. The plan is deficient as it is not signed or dated by either the debtors or debtors' attorney. The final page of the plan appears to be the page which is the final page of the Rights and Responsibilities. Equally important, as the final page of the plan is missing, the plan also lacks the required standard provisions of the Eastern District Plan, ECD 3-080, contained in Sections 5.02 through 6.04 inclusive.

The debtors must file an amended plan. 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.

31. [22-21299](#)-A-13 **IN RE: DAMON TURNER**
[MJD-2](#)

OBJECTION TO CLAIM OF CAVALRY SPV I, LLC, CLAIM NUMBER 1
5-25-2022 [\[15\]](#)

MATTHEW DECAMINADA/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Objection: Claim

Disposition: Overruled without prejudice

Order: Civil minute order

A claim objection is a contested matter. See Fed. R. Bankr. P. 3007 advisory committee's note. As a contested matter, the objection must be served in the manner provided by Rule 7004. See Fed. R. Bankr. P. 9014(b). Additionally, compliance with Fed. R. Bankr. P. 3007(a)(2) and LBR 3007-1(b)(1) are required.

INSUFFICIENT NOTICE

(b) Amount of Notice.

- 1) Objections Set on 44 Days' Notice. Unless the objecting party elects to give the notice permitted by LBR 3007-1(b)(2), the objecting party shall file and serve the objection at least forty-four (44) days prior to the hearing date.

LBR 3007-1(b)(1).

The notice of motion, ECF No. 16, provides that opposition, if any, shall be in writing and shall be served and filed with the court by the responding party at least fourteen (14) days preceding the date

or continued date of the hearing. This is the notice required under LBR 3007-1(b)(1). LBR 3007-1(b)(1) also requires 44 days' notice of any objection requiring written opposition.

The movant has only provided 42 days' notice of the objection. See Certificate of Service, ECF No. 18. The objection will be overruled without prejudice.

INSUFFICIENT SERVICE UNDER Rule 3007(a)(2)

The objection to claim and notice must be served on the claimant by first-class mail to the person most recently designated on the claimant's original or amended proof of claim as the person to receive notices, at the address so indicated. See FRBP 3007(a)(2). While the court does not discourage the additional service provided by the debtor, it may not substitute for the service required under Rule 3007(a)(2).

The debtor failed to notice the responding creditor at the notice on Claim No. 1. The objection will be overruled without prejudice.

CIVIL MINUTES ORDER

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

The debtor's Objection to the Claim of Cavalry SPV I, LLC, has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the objection is overruled without prejudice.