



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

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

DAY: MONDAY
DATE: JULY 10, 2023
CALENDAR: 11:00 A.M. CHAPTER 13 CASES

Unless otherwise ordered, all matters before Chief Judge Fredrick E. Clement shall be heard simultaneously: (1) **IN PERSON** in Courtroom 28, (2) via **ZOOMGOV VIDEO**, (3) via **ZOOMGOV TELEPHONE**, and (4) via **COURTCALL**.

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PRE-HEARING DISPOSITION INSTRUCTIONS

RULINGS

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

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

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

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

CHANGES TO PREVIOUSLY PUBLISHED RULINGS

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

ERRORS IN RULINGS

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

1. [22-21705](#)-A-13 **IN RE: SHAWNA WILLIAMS**
[RK-2](#)

MOTION TO MODIFY PLAN
5-25-2023 [\[41\]](#)

RICHARD KWUN/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Denied without prejudice

Order: Civil minute order

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

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

For the following reasons the motion will be denied without prejudice.

The Certificate of Service is Unsigned

Counsel for the debtor used the court’s mandatory certificate of service form in memorializing service of the motion. However, the form is not signed by counsel for the debtor. See Certificate of Service, page 4, ECF No. 46.

In response to the trustee’s opposition, which was filed in part because of the unsigned certificate of service, counsel filed a separate opposition and declaration stating that he had served the documents. Counsel did not file an amended certificate of service which is the proper remedy in this circumstance. Filing a separate declaration does not allow the court, or anyone else searching the court’s docket, to determine if there are amendments to the certificate of service.

Because the court denies the motion on procedural grounds it need not reach the remaining issue raised by the Chapter 13 trustee.

CIVIL MINUTE ORDER

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

The debtors' motion to modify, has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice. The court denies modification of the chapter 13 plan.

2. [23-21308](#)-A-13 **IN RE: RICHARD/LYNDA BYERS**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK,
CHAPTER 13 TRUSTEE
6-6-2023 [\[12\]](#)

CATHERINE KING/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).

SOCIAL SECURITY DOCUMENTATION

(b) Individual debtor's duty to provide documentation

(1) Personal identification

Every individual debtor shall bring to the meeting of creditors under § 341:

(A) a picture identification issued by a governmental unit, or other personal identifying information that establishes the debtor's identity; and

(B) *evidence of social-security number(s), or a written statement that such documentation does not exist.*

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

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

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).

Attorney Fees

LBR 2016-1(c)(1) allows a maximum of \$4,000.00 in attorney fees to be paid to debtor(s) counsel in a non-business case and \$6,000.00 in a business case. This case is a non-business case.

The proposed plan, ECF No. 3, states that the debtors' attorney has elected to be paid pursuant to Local Bankruptcy Rule 2016-1(c). The plan also states \$2,000.00 was paid prior to filing this case and \$2,000.00 will be paid through the Plan, for a total of \$4,000.00.

However, Section 3.06 of the plan provides for a \$0 monthly amount in order to pay the remaining \$2,000.00. *Id.* The trustee is unable to determine if the plan is feasible or to pay any amount to the attorney without a sum stated in this section.

Accordingly, the court finds that the proposed plan is not feasible and will sustain the objection.

Inaccurate Schedules

The trustee cannot determine if the plan, in his estimation is feasible. The debtor admitted at the meeting of creditors that his Schedule J was inaccurate regarding a utility expense.

Moreover, the debtor may have failed to disclose payments to creditors during the preference period. Without this information the trustee cannot calculate the projected liquidation value of the estate, which may in turn also impact the feasibility of the proposed plan.

CIVIL MINUTE ORDER

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

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

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

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

3. [23-21213](#)-A-13 **IN RE: FRITZIE CORTES**
[DPR-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY BANK OZK
6-13-2023 [\[32\]](#)

DAVID RITZINGER/ATTY. FOR DBT.
ARNOLD GRAFF/ATTY. FOR MV.
RESPONSIVE PLEADING

Final Ruling

Objection: Creditor's Objection to Confirmation of Plan

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

Disposition: Overruled in part; sustained in part; confirmation denied

Order: Civil minute order

Bank OZK objects to confirmation of the debtor's proposed Chapter 13 plan. The objection contends that the plan may not be confirmed because the plan calls for valuation of the collateral which secures the creditor's loan.

The debtor has filed written opposition to the objection contending that it should be overruled as the objection was not filed timely. LBR 3015-1(c)(4).

ORAL ARGUMENT

The issues in this matter having been sufficiently briefed by the parties, the court finds that the matter does not require oral

argument. LBR 9014-1(h); *Morrow v. Topping*, 437 F.2d 1155, 1156 (9th Cir. 1971) (approving local rules that authorize disposition without oral argument). Further, no evidentiary hearing is necessary for resolution of material, factual issues.

PLAN 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).

OBJECTION IS NOT TIMELY

Objecting to Plan Confirmation. Creditors, as well as the trustee, may object to the confirmation of the chapter 13 plan. An objection and a notice of hearing must be filed and served upon the debtor, the debtor's attorney, and the trustee *within seven (7) days after the first date set for the meeting of creditors held pursuant to 11 U.S.C. § 341(a)*. The objection shall be set for hearing on the confirmation hearing date and time designated in the *Notice of Chapter 13 Bankruptcy Case*. The objection shall comply with LBR 9014-1(a)-(e), (f)(2), and (g)-(l), including the requirement for a Docket Control Number on all documents relating to the objection. *The notice of hearing shall inform the debtor, the debtor's attorney, and the trustee that no written response to the objection is necessary.* Absent a timely objection and a properly noticed hearing on it, the Court may confirm the chapter 13 plan without a hearing.

LBR 3015-1(c)(4) (emphasis added).

The meeting of creditors was held June 1, 2023. See Trustee report dated June 1, 2023. This objection was filed and served on June 13, 2023, and therefore is untimely. The objection will be overruled.

However, the court will not confirm the plan as the motion to value the objecting creditor's collateral has not yet been granted. The parties stipulated to a continuance of the hearing on the motion to value, which will be heard on August 22, 2023. Stipulation, ECF No. 49.

NOTICE OF OBJECTION CONTRAVENES LBR 3015-1(c)(4)

The objecting creditor filed a second amended notice of hearing in this matter which provided as follows:

The Local Bankruptcy Rules require that any reply to the Objection must be filed and served, in writing, not less than fourteen (14) calendar dates preceding

the hearing date and must be supported by admissible evidence. Unless written opposition supported by admissible evidence is filed and served as required by the Local Bankruptcy rules, the Court may resolve the Motion and grant the relief requested without oral argument.

Second Amended Notice, 2:9-13, ECF No. 43.

The notice contravenes LBR 3015-1(c)(4) which requires that the debtor and attorney be advised that written opposition to the objection is not required.

Future violations of the requirements of LBR 3015-1(c)(4) may result in denial of relief and/or sanctions. LBR 1001-1(g).

PLAN RELIES UPON MOTION TO VALUE

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

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

Accordingly, and despite overruling the objection on procedural grounds, the court must deny confirmation of the plan. Without and order valuing the collateral of Bank OZK the court is unable to determine if the plan is feasible under 11 U.S.C. § 1325(a)(6). The objection will be sustained in part and confirmation denied.

The parties have agreed to obtain an appraisal of the collateral, a 2019 Coachman Galleria 24TM, as follows:

The parties shall select an impartial appraiser to inspect and value the collateral securing the claim of Bank OZK within 45 days of this stipulation; The parties agree to be bound by the value determined by the impartial appraiser, and agree that the value determined by the impartial appraiser shall be the value of secured creditor's claim with respect to Debtor's Motion to Value and Debtor's Chapter 13 plan; and The Parties request that the Court continue the hearing on Debtor's Motion to Value from June 27, 2023 to August 22, 2023.

Stipulation, 2:6-12, ECF No. 49.

The court has approved the stipulation and the hearing on the motion to value was continued to August 22, 2023, Order, ECF No. 50.

VIOLATION OF LBR 9014-1(c)

The docket control number given for this matter violates the court's Local Rules, LBR 9014-1(c), regarding proper use of docket control numbers. When using a docket control number, a party must use both letters (usually initials of the attorney for the movant) and a number. The numerical portion of the docket control number must be "the number that is one number higher than the number of motions previously filed by said attorney" in that particular case. LBR 9014-1(c)(3). Thus, a party may not use the same docket control number on separate matters filed in the same case.

The docket control number used in this motion was used in a previous motion by the objecting creditor - a motion to value collateral filed on May 25, 2023, ECF No. 23. The duplication of docket control numbers makes it difficult for the court to accurately determine which documents have been filed in a particular matter.

Future violations of the requirements of LBR 9014-1(c) may result in denial of relief and/or sanctions. LBR 1001-1(g).

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.

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

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

4. [22-21422](#)-A-13 **IN RE: MARTIN/MONIQUE ARCHULETA**
[CAS-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-31-2023 [\[52\]](#)

MARK BRIDEN/ATTY. FOR DBT.
CHERYL SKIGIN/ATTY. FOR MV.
CAPITAL ONE AUTO FINANCE VS.

Final Ruling

Motion: Stay Relief

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

Disposition: Denied as moot

Order: Civil minute order

Subject: 2022 Ford Maverick XLT SuperCrew Pickup

Plan Confirmed: March 3, 2023

Capital One Auto Finance seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a).

Federal courts have no authority to decide moot questions. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67-68, 72 (1997). "Mootness has been described as the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." *Id.* at 68 n.22 (quoting *U.S. Parole Comm'n v. Geraghty*, 445 U.S. 388, 397 (1980)) (internal quotation marks omitted).

The confirmed chapter 13 plan in this case provides for the movant's claim in Class 4. Chapter 13 Plan, ECF No 42. Class 4 secured claims are long-term claims that mature after the completion of the plan's term. They are not modified by the plan, and they are not in default as of the filing of the petition. They are paid directly by the debtor or a third party. Section 3.11(a) of the plan provides: Upon confirmation of the plan, the automatic stay of 11 U.S.C. § 362(a) and the co-debtor stay of 11 U.S.C. § 1301(a) are . . . modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract"

Because the plan has been confirmed, the automatic stay has already been modified to allow the moving party to exercise its rights against its collateral. No effective relief can be awarded. The movant's personal interest in obtaining relief from the stay no longer exists because the stay no longer affects its collateral. The motion will be denied as moot.

CIVIL MINUTE ORDER

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

Capital One Auto Finance's motion for relief from the automatic stay has been presented to the court.

IT IS ORDERED that the motion is denied as moot.

5. [23-20730](#)-A-13 **IN RE: JEREMY BAILEY**
[BLG-1](#)

MOTION TO CONFIRM PLAN
5-23-2023 [\[18\]](#)

CHAD JOHNSON/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

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

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

ORAL ARGUMENT

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

MATHEMATICAL FEASIBILITY

The trustee opposes confirmation of the plan contending the plan is not mathematically feasible. The trustee calculates that the

proposed 100% plan will only pay 33%, excluding allowed compensation, to the unsecured creditors.

The plan does not provide for payments to the trustee in an amount necessary for the execution of the plan. See 11 U.S.C. § 1322(a)(1).

The court will deny confirmation of the debtor's plan.

CIVIL MINUTE ORDER

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

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

The debtor's motion to 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.

6. [23-20831](#)-A-13 **IN RE: ELIZABETH RODAS BARRIOS**
[KAZ-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY THE BANK OF
NEW YORK MELLON
5-11-2023 [\[14\]](#)

GARY FRALEY/ATTY. FOR DBT.
KRISTIN ZILBERSTEIN/ATTY. FOR MV.

Final Ruling

Objection: Creditor's Objection to Confirmation of Plan

Notice: Continued from May 31, 2023

Disposition: Sustained and confirmation denied

Order: Civil minute order

The Bank of New York Mellon objects to confirmation of the debtor's Chapter 13 plan. The hearing on this matter was continued to allow the debtor to file written opposition to the motion. The court ordered as follows:

No later than June 19, 2023, the debtor may file and serve opposition to the objection. *If the debtor fails to oppose the objection the court may rule on the objection without further notice or hearing.*

Order, ECF No. 19 (emphasis added).

The debtor has failed to file opposition to the objection.

ORAL ARGUMENT

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

PLAN CONFIRMATION

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

PLAN FEASIBILITY

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

The opposing creditor holds a note secured by a deed of trust against the debtor's residence located at 809 Todhunter Avenue, West Sacramento, California. The creditor has filed a claim which lists prepetition mortgage arrears in the amount of \$122,846.60, Claim No. 1.

The proposed Chapter 13 plan calls for the sale of the property within 12 months, but provides *no arrears payment* to the opposing

creditor during the first 12 months of the plan. See Chapter 13 Plan, Section 7 Non-Standard Provisions, ECF No. 3.

The debtor filed two previous Chapter 13 cases: 1) 2016-22972, E.D. Cal. (2016); and 2) 2013-20046, E.D. Cal. (2013). While plans were confirmed in both cases a discharge was obtained in neither.

Sale of Property is Speculative

To cure the arrears would require a monthly payment of \$2,047.44, Motion, 2:26-28, ECF No. 14. Because the appears debtor unable to tender such a payment the cure of the arrears is offered through a proposed sale. However, the debtor has provided no evidence supporting the sale of the property within 12 months in an amount sufficient to pay the note in full. The terms of the proposed plan also suggest that the proposed sale is speculative as it provides an alternative to the sale as follows:

If Debtor does not obtain court approval and complete a sale of the property by the end of month 12 (March 31, 2024), then Debtor shall modify her Plan to provide for repayment of mortgage arrears, or for the debt to be satisfied as a Class 3 claim, or seek and obtain lender and court approval of a modification of the loan.

Chapter 13 Plan, Section 7-Non Standard Provisions, ECF No. 3.

Absent any showing by the debtor of the feasibility of the proposed sale under the plan and cure of mortgage arrears, the court finds that the plan is not feasible under 11 U.S.C. § 1325(a) (6).

PLAN CONTRAVENES 11 U.S.C. § 1322(b) (2)

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

. . .

(2) modify the rights of holders of secured claims, *other than a claim secured only by a security interest in real property that is the debtor's principal residence*, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims;

11 U.S.C. § 1322(b) (2) (emphasis added).

The plan provides for an adequate protection payment to the objecting creditor of \$1,588.00 per month. The contractually required monthly payment is \$1,739.54, Claim No. 1, Attachment.

Because the creditor's lien is secured by real property, which is the debtor's principal residence, the lien cannot be altered with

adequate protection payments that are less than the regular contractual payments under § 1322(b)(2).

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

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

7. [23-21431](#)-A-13 **IN RE: STELLA HERNANDEZ**
[PPR-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY THE GOLDEN 1 CREDIT
UNION
5-18-2023 [\[20\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.
NOEMI PADILLA/ATTY. FOR MV.
RESPONSIVE PLEADING

Tentative Ruling

Objection: Creditor's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

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

MORTGAGE ARREARS

11 U. S. C. § 1325(a)(5)(B)(ii): Improper Classification of Secured Claim

The Golden One Credit Union objects to confirmation, contending that as residential home mortgage payments were delinquent on the date of the petition that classification of that claim in Class 4 (direct payment) is improper. The Golden One holds notes secured by two deeds of trust against the debtor's residence. This objection relates to the note secured by a deed of trust as evidenced in Claim No. 6.

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 "not less than 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).

In most instances, the validity and amount of a secured debt is determined by state, not federal, law. 11 U.S.C. § 502(b)(1), §1322(e) ("the amount necessary to cure the default, shall be determined in accordance with the underlying agreement and applicable nonbankruptcy law"). Where, as here, the claim arises from a secured claim against the debtor's residence the "allowed amount of the secured claim" will be determined by the underlying note and deed of trust. A creditor expresses that "allowed amount" by filing a Proof of Claim; absent objection, the amount stated in the Proof of Claim, including the amount of the ongoing mortgage payment and any arrearage, is "deemed" allowed. 11 U.S.C. § 502(a).

Here, the plan places the secured creditor's claim in Class 4, yet the claim is in default and includes a pre-petition arrearage in the amount of \$1,740.64. Compare Claim No. 6 (reflecting delinquency) with 11 U.S.C. 502(a) (deemed allowance).

Two principles control this analysis. First, Chapter 13 debtors do not have an absolute right to make payments to unimpaired claims directly to the creditor effected. *In re Giesbrecht*, 429 B.R. 682, 685-86 (B.A.P. 9th Cir. 2010); *Cohen v. Lopez (In re Lopez)*, 372 B.R. 40 (9th Cir. BAP 2007), *aff'd*, and adopted by *Cohen v. Lopez (In re Lopez)*, 550 F.3d 1202 (9th Cir.2008) ("a debtor has no absolute right to make such [direct] payments"). The decision to allow, or to not allow, a Chapter 13 payments directly has always been discretionary. *Giesbrecht*, 429 B.R. at 690.

Thus, bankruptcy courts have been afforded the discretion to make the determination of when direct payments may or may not be appropriate based upon the confirmation requirements of § 1325, policy reasons, and the factors set forth by case law, local rules or guidelines. *Lopez*,

372 B.R. at 46-47 ("Reflecting the discretion granted by the Code, different courts and different circuits have different rules on the permissibility of direct payment, a fact unchanged by or since [*Fulkrod v. Barmettler (In re Fulkrod)*, 126 B.R. 584 (9th Cir. BAP 1991) *aff'd sub. nom.*, *Fulkrod v. Savage (In re Fulkrod)*, 973 F.2d 801 (9th Cir.1992)].")

In re Giesbrecht, 429 B.R. at 690 (emphasis added).

Second, at least where a residential mortgage is delinquent on the petition date, merely providing in the plan that the debtor will pay the claim directly does not satisfy § 1325(a)(5). As Judge Lundin commented:

A bald statement that a creditor will be dealt with "outside the plan" fails to satisfy any of the statutory ways in which the Chapter 13 plan can provide for an allowed secured claim under 11 U.S.C. § 1325(a)(5)-- unless the creditor "accepts" being "outside" for whatever it might mean. "Outside" does not preserve the lien of the affected creditor and does not guarantee present value of collateral--rights the secured creditor otherwise has at confirmation under § 1325(a)(5). Placing a secured claim "outside the plan" cannot rescue confirmation of a plan that does not satisfy the confirmation tests for treatment of secured claims.

Keith M. Lundin, *Lundin On Chapter 13*, § 74.8, at ¶ 5.

Argument might be interposed to distinguish the classification problem described by Judge Lundin with respect to § 1325(a)(5) where the residential mortgage is not delinquent on the petition date because as a matter of law those mortgages cannot be modified. 11 U.S.C. § 1322(b)(2), (b)(5), (c)(2) (prohibiting a debtor from modifying a deed of trust applicable to their principal residence, except to cure a delinquency or extending the "last original payment schedule" to a date not later than plan completion).

Moreover, the mandatory form plan in the Eastern District of California Bankruptcy Court specifically contemplates and addresses this eventuality. LBR 3015-1(a). It provides:

Class 1 includes all delinquent secured claims that mature after the completion of this plan, including those secured by Debtor's principal residence.

(a) Cure of defaults. All arrears on Class 1 claims shall be paid in full by Trustee. The equal monthly installment specified in the table below as the Arrearage dividend shall pay the arrears in full.

...

(b) Maintaining payments. *Trustee shall maintain all post-petition monthly payments to the holder of each Class 1 claim whether or not this plan is confirmed or a proof of claim is filed.*

Chapter 13 Plan § 3.07, EDC 3-080.

In contrast, Class 4 of the plan for the Eastern District of California contemplates a debtor whose mortgage is fully current on the date the case is filed. It provides:

Class 4 includes all secured claims paid directly by Debtor or third party. Class 4 claims mature after the completion of this plan, are not in default, and are not modified by this plan. These claims shall be paid by Debtor or a third person whether or not a proof of claim is filed[,] or the plan is confirmed.

Id. at § 3.10.

Here, the treatment of the delinquent mortgage in Class 4 (direct payment by the debtor) does not satisfy § 1325(a)(5). See 11 U.S.C. § 1325(a)(5)(B)(ii); *Lundin On Chapter 13* at § 74.8. The creditor has not expressly accepted this treatment in the plan; this court will not infer acceptance from the creditor's silence. 11 U.S.C. § 1325(a)(5)(A); *In re Pardee*, 218 B.R. 916, 939-40 (B.A.P. 9th Cir. 1998), *aff'd*, 193 F.3d 1083 (9th Cir. 1999) (Klein, J. concurring and dissenting) ("[I]mplied acceptance is a troublesome theory that has been largely discredited in all but one application: the formality of acceptance of a chapter 13 plan by a secured creditor whose claim is not being treated in accord with statutory standards may be implied from silence"). In the alternative, the plan does not provide for payment of the allowed amount of the claim, i.e., ongoing mortgage plus the arrearage. 11 U.S.C. § 1325(a)(5)(B). Finally, the plan does not provide for surrender of the collateral. 11 U.S.C. § 1325(a)(5)(C). Moreover, the classification does not comply with the terms of the mandatory form plan for the Eastern District. Plan § 3.07, EDC 03-080; LBR 3015-1(a).

As a result, the plan does not comply with § 1325(a)(5) and will not be confirmed.

Debtor Response

The debtor filed a response to the objection which is supported by the declaration of the debtor. The response states that the debtor made the required payment after the date the payment was due but during the (presumed) grace period. The debtor contends she is current with mortgage payments to the opposing creditor. See Response, ECF No 26.

The payment is due on the first date of the month. See Claim No. 6, Attachment, Note. The petition was filed May 1, 2023. The debtor states that she is accustomed to making her payment prior to the fifteenth day of each month and that she did not believe she was

delinquent on the date the petition was filed. Declaration, ECF No. 27.

The debtor has not filed an objection to the claim filed by the objecting creditor.

The court finds that the mortgage payments were delinquent on the date the petition was filed and will sustain the objection.

CIVIL MINUTE ORDER

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

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

The Golden One Credit Union'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. [23-21333](#)-A-13 **IN RE: JESSIE WEBB**
[JCW-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY GUILD MORTGAGE COMPANY
LLC
6-15-2023 [\[18\]](#)

BRUCE DWIGGINS/ATTY. FOR DBT.
JENNIFER WONG/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: Overruled

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).

FAILURE TO PROVIDE FOR CLAIM IN PLAN

Guild Mortgage Company, LLC, objects to confirmation of the debtor's plan contending the plan does not provide for the creditor's claim. The creditor holds a note secured by a deed of trust against property located at 438 Burcham Flat Road, Coleville, California.

The court notes that the plan does not provide for treatment of the creditor's claim, however, the debtor appears to disclaim any interest in the property. The debtor does not reside in the property and Schedule D indicates that the debtor's ex-spouse was awarded the property in a previous proceeding for dissolution of marriage. A review of the debtor's previous Chapter 13 case 2019-24159, E.D. Cal. (2019) shows the same information.

The objection will be overruled because plan's failure to provide for a secured creditor's claim (or arrearage claim) in the plan does not alter the creditor's rights. A proof of claim, not the plan, controls the amount of a claim. Ch. 13 Plan § 2.04. Under § 1325(a)(5), moreover, the plan does not have to provide for a secured claim, although if the plan does provide for a secured claim, the plan's treatment of the secured claim must meet the requirements of § 1325(a)(5). See 11 U.S.C. § 1325(a)(5).

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.

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

IT IS ORDERED that the objection is overruled.

9. [23-20837](#)-A-13 **IN RE: KEVIN CANTWELL**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.
CUSICK
5-11-2023 [\[15\]](#)

SETH HANSON/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

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

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

As a courtesy to the court debtor's counsel informed the court that an amended plan has been filed. The debtor has filed a modified plan after this objection to confirmation was filed. The objection will be overruled as moot.

CIVIL MINUTE ORDER

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

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

10. [19-26938](#)-A-13 **IN RE: STACY GRAY**
[DPC-1](#)

OBJECTION TO CLAIM OF NUCO2, LLC, CLAIM NUMBER 4
5-17-2023 [\[31\]](#)

MARC CARPENTER/ATTY. FOR DBT.

Final Ruling

Objection: Objection to Claim

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

Disposition: Sustained

Order: Civil minute order

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this objection. 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).

FACTS

The Chapter 13 trustee objects to the claim of NUCO2, LLC, Claim No. 4. The trustee contends that the claim was improperly filed in the instant case.

The Claim was filed in the name of Jeffrey Alan Hansen and Jennifer Rose Hansen and filed in the instant case in error. The Hansen case bears the case number 2019-26937-B-7 which is one digit off from the instant case number. Because the claim contained the wrong case number it was filed by the clerk in the instant case. The trustee distributed \$559.21 to the creditor but has since recovered the funds when the error was discovered. See Declaration of Neil Enmark, ECF No. 33.

Because the claim has not been withdrawn in the instant case the trustee must object to the claim to prevent future incorrect distributions.

CLAIMS

A proof of claim is "deemed allowed, unless a party in interest . . . objects." 11 U.S.C. § 502(a). Federal Rule of Bankruptcy Procedure 3001(f) creates an evidentiary presumption of validity for "[a] proof of claim executed and filed in accordance with [the] rules." Fed. R. Bankr. P. 3001(f); *see also Litton Loan Servicing, LP v. Garvida (In re Garvida)*, 347 B.R. 697, 706-07 (B.A.P. 9th Cir. 2006). This presumption is rebuttable. *See Litton Loan Servicing*, 347 B.R. at 706. "The proof of claim is more than some evidence; it

is, unless rebutted, prima facie evidence. One rebuts evidence with counter-evidence." *Id.* at 707 (citation omitted) (internal quotation marks omitted).

"A creditor who files a proof of claim that lacks sufficient support under Rule 3001(c) and (f) does so at its own risk. That proof of claim will lack prima facie validity, so any objection that raises a legal or factual ground to disallow the claim will likely prevail absent an adequate response by the creditor." *Campbell v. Verizon Wireless S-CA (In re Campbell)*, 336 B.R. 430, 436 (B.A.P. 9th Cir. 2005).

Furthermore, "[a] claim that is not regular on its face does not qualify as having been 'executed and filed in accordance with these rules.'" *Litton Loan Servicing*, 347 B.R. at 707 n.7 (quoting Fed. R. Bankr. P. 3001(f)). Such a claim lacks prima facie validity.

However, "a claim objection that does not actually contest the debtor's liability or the amount of the debt is not enough to disallow a proof of claim, even if the proof of claim lacks the documentation required by Rule 3001(c)." *Campbell*, 336 B.R. at 434. In other words, objections based solely on noncompliance with Rule 3001(c) are insufficient to disallow a claim absent any factual or legal disagreement as to the liability or amount of the claim. *Id.* at 434-36.

But "a creditor's lack of adequate response to a debtor's formal or informal inquiries 'in itself may raise an evidentiary basis to object to the unsupported aspects of the claim, or even a basis for evidentiary sanctions, thereby coming within [§] 502(b)'s grounds to disallow the claim.'" *Id.* at 436 (quoting *Heath v. Am. Express Travel Related Servs. Co. (In re Heath)*, 331 B.R. 424, 437 (B.A.P. 9th Cir. 2005)).

DISCUSSION

The claim is erroneous on its face as it was not filed in the name of the debtor in this case. The trustee's objection is unopposed by the claimant. Moreover, the claimant, without dispute, returned the erroneous distributions previously made to the trustee. The court will sustain the trustee's objection. The claim of NUCO2, LLC, Claim No. 4, is disallowed in its entirety in this case.

CIVIL MINUTE ORDER

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

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

The Chapter 13 trustee's objection to claim has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the objection,

IT IS ORDERED that the objection is sustained. The claim filed by NUCO2, LLC, Claim No. 4, will be disallowed in its entirety in this case.

11. [22-23039](#)-A-13 **IN RE: KAREN GARLINGTON**
[PGM-3](#)

OBJECTION TO CLAIM OF JOHN COSBY, AS CO-TRUSTEE OF THE COSBY FAMILY TRUST, AS AMENDED AND RESTATED, CLAIM NUMBER 10
5-17-2023 [[95](#)]

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

12. [22-22543](#)-A-13 **IN RE: JOHN SCHULTZ**
[MRL-1](#)

CONTINUED MOTION TO MODIFY PLAN
5-3-2023 [[21](#)]

MIKALAH LIVIAKIS/ATTY. FOR DBT.

Final Ruling

Motion: Modify Chapter 13 Plan

Notice: Continued from June 13, 2023

Disposition: Granted

Order: Prepared by movant, approved by the trustee

Subject: Chapter 13 Plan, filed May 3, 2023

The hearing on this motion was continued to allow the debtor to properly file supporting Schedules I and J evidencing the feasibility of the plan. On June 14, 2023, the debtor filed the schedules, ECF No. 34. The Chapter 13 trustee had previously opposed the motion contending the schedules were not properly signed. The court ordered as follows:

IT IS ORDERED that the motion is continued to July 10, 2023, at 11:00 a.m. No later than June 26, 2023, the debtor shall file supplemental schedules I and J using form EDC 2-015. The form shall be fully completed and signed by the debtor and debtor's counsel.

Order, ECF No. 37.

As the debtor has complied with the court's order and no further opposition has been filed by any party the court will grant the debtor's motion.

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.

13. [23-21248](#)-A-13 **IN RE: CHRISTOPHER SEWARD**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
6-12-2023 [\[13\]](#)

GARY FRALEY/ATTY. FOR DBT.

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Continued to August 22, 2023, at 9:00 a.m.

Order: Civil minute order

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local

Bankruptcy Rule 3015-1. The debtor has the burden of proving that the plan complies with all statutory requirements of confirmation. *In re Andrews*, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*, 32 F.3d 405, 407-08 (9th Cir. 1994).

PLAN FEASIBILITY

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

Plan Delinquency

The trustee indicates that the plan payments are delinquent in the amount of \$3,370.00 with another payment of \$3,370.00 due June 25, 2023. The plan cannot be confirmed if the plan payments are not current.

Sale of Real Property

The trustee objects to the plan as it provides for payment from the sale of real property after an 18-month period. The trustee contends that a successful sale of the property is speculative after 18 months. The trustee further objects because the plan does not provide for payments after 18 months.

Courts have historically found balloon payments 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's plan calls for payment as follows:

7.01 Plan payments shall be \$3,370.00 per month from month 1 (May 2023) to month 18 (October 2024).

7.02 (modifying § 3.07) For months 1 through 18, Class 1 Creditor shall be paid \$2,358.64 per month for ongoing mortgage payments plus an additional \$650.00 per month on arrears as adequate protection on its mortgage lien against Debtor's real property located at 4924 T Street Sacramento, CA 95819 ("the property").

7.03 Debtor shall list the property for sale within one hundred eight (180) days. *Class 1 creditor shall be paid in full from the sales proceeds.*

7.04 Upon receipt of Debtor's Schedule A/B tax refunds, Debtor shall deliver \$3,334.00 to the trustee, who shall then distribute the sum of \$3,000.00 to the Fraley & Fraley Trust Account to be held for potential attorney's fees and costs subject to court approval after noticed motion for attorney's fees.

7.05 (modifying § 3.05): Debtor's Attorney was paid \$4,000 into Attorney's Trust Account, of which \$2,004.00 was earned and paid prior to filing the herein Bankruptcy Petition. The remainder of \$1,996.00 is held in Attorney's Trust Account pending confirmation and court approval by noticed motion for additional attorney's fees.

7.06 Attorney's fees to be billed on an hourly basis. This will be paid by distribution from attorney's trust account and additional fees to be placed in attorney's trust account, paid through the plan, and paid to attorney pursuant to noticed motion for attorney's fees.

7.07 *If Debtor does not obtain court approval and complete a sale of the property by the end of month 18 (October 31, 2024), then Debtor shall modify his Plan to provide for repayment of mortgage arrears, or for the debt to be satisfied as a Class 3 claim, or seek and obtain lender and court approval of a modification of the loan.*

Chapter 13 Plan, Section 7, Non Standard Provisions, ECF No. 3.

As market fluctuations are often unpredictable the court finds that the proposed sale in month 18 is scheduled to take place too far in the future to accurately assess whether sufficient funding will be derived to pay the secured creditor in the plan as proposed.

Moreover, the terms of the proposed plan also suggest that a successful sale is speculative as it provides an alternative to the sale after 18 months. Moreover, the plan does not provide for any payments after 18 months.

Attorney Fees

Generally, Chapter 13 administrative expenses may not be deducted in making the hypothetical Chapter 7 analysis. Such a position is contrary to long-settled Chapter 13 law. *Jensen v. Dunivent (In re Dewey)*, 237 B.R. 783, 788 (B.A.P. 10th Cir. 1999) (Chapter 13 administrative expenses may not be deducted in making the hypothetical Chapter 7 analysis); *In re Goudreau*, 530 B.R. 783, 787 (Bankr. D. Kan. 2015) ("[T]his does not mean that Debtors' Chapter 13 attorney fees are such a priority claim for purposes of the hypothetical liquidation"); Keith M. Lundin, *Lundin On Chapter 13*, § 90.1, at ¶ 32 ("The Bankruptcy Appellate Panel for the Tenth Circuit has carefully explained that the administrative expenses deducted to determine hypothetical liquidation value under § 1325(a)(4) do not include the administrative expenses of the Chapter 13 case).

The trustee opposes the distribution and payment of non-exempt tax refunds to the debtor's attorney upon receipt of same from the debtor. See Plan Provision 7.04 as indicated above in this ruling. The trustee has failed to analyze this provision and indicate its potential impact under 11 U.S.C. §§ 1325(a)(4), 1322(a)(1), (2), (3).

The court will continue the hearing on this objection to allow the trustee to supplement the objection regarding attorney compensation and to allow the debtor to file a response to each of the objections raised by the trustee. The trustee's supplement shall include the status of the plan payments. The court may rule on the objection without further notice or 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 hearing on the objection is continued to August 22, 2023. at 9:00 a.m. No later than July 25, 2023, the trustee shall file and serve a supplement to his objection as indicated by the court in this ruling. The trustee's supplement shall include the status of the plan payments at that time.

IT IS FURTHER ORDERED that the debtor may file and serve a reply no later than August 8, 2023. The court may rule on this matter without further notice or hearing.

IT IS FURTHER ORDERED that should the debtor file an amended plan or concede the argument to the trustee the debtor shall so inform the court by filing a statement with the court no later than August 8, 2023.

14. [23-21049](#)-A-13 **IN RE: CARLETON/STACIE HYATT**
[CK-2](#)

MOTION TO CONFIRM PLAN
5-24-2023 [\[39\]](#)

CATHERINE KING/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by the movant, approved by the trustee

Subject: Amended Chapter 13 Plan, filed May 23, 2023

DEFAULT OF RESPONDENT

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

The debtor seeks confirmation of the Amended Chapter 13 Plan, ECF No. 37. The plan is supported by Schedules I and J filed, May 23, 2023, ECF No. 38. The Chapter 13 trustee has filed a non-opposition to the motion, ECF No. 49.

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.

15. [23-21351](#)-A-13 **IN RE: TANYA HALL**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
6-14-2023 [\[22\]](#)

TIMOTHY WALSH/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).

MEETING OF CREDITORS

The debtor shall appear and submit to examination under oath at the meeting of creditors under section 341(a) of this title. Creditors, any indenture trustee, any trustee or examiner in the case, or the United States trustee may examine the debtor. The United States trustee may administer the oath required under this section.

11 U.S.C. § 343.

All debtors are required to attend the meeting of creditors. The debtor did not attend the scheduled meeting. Thus, the trustee was unable to examine the debtor regarding the issues raised in this motion. The court will sustain the objection.

MATHEMATICAL FEASIBILITY

The trustee opposes confirmation of the plan contending the plan is not mathematically feasible. The trustee calculates that the plan will take over 102 months to fund as proposed.

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

The court will deny confirmation of the debtor's plan.

PLAN FEASIBILITY

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

Plan Delinquency

The trustee indicates that the plan payments are delinquent in the amount of \$3,200.00 with a further payment of \$3,200.00 due June 25, 2023. The plan cannot be confirmed if the plan payments are not current.

Multiple Bankruptcy Filings

This is the third Chapter 13 case filed by the debtor since 2019. The trustee disputes the feasibility of the proposed plan in this context as the debtor's two prior Chapter 13 cases have each been dismissed. The debtor has provided no evidence regarding specific changes in her circumstances which show how this plan will be feasible when previous plans proposed in cases filed in 2019 and 2020 have failed.

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.

16. [23-21351](#)-A-13 **IN RE: TANYA HALL**
[RMP-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY REAL TIME RESOLUTIONS,
INC
6-14-2023 [\[17\]](#)

TIMOTHY WALSH/ATTY. FOR DBT.
RENEE PARKER/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)(B)(ii): Improper Classification of Secured Claim

Real Time Resolutions, Inc., objects to confirmation, contending that as residential home mortgage payments were delinquent on the date of the petition that classification of that claim in Class 4 (direct payment) is improper.

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 "not less than 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).

In most instances, the validity and amount of a secured debt is determined by state, not federal, law. 11 U.S.C. § 502(b)(1), §1322(e) ("the amount necessary to cure the default, shall be determined in accordance with the underlying agreement and applicable nonbankruptcy law"). Where, as here, the claim arises from a secured claim against the debtor's residence the "allowed amount of the secured claim" will be determined by the underlying note and deed of trust. A creditor expresses that "allowed amount" by filing a Proof of Claim; absent objection, the amount stated in the Proof of Claim, including the amount of the ongoing mortgage payment and any arrearage, is "deemed" allowed. 11 U.S.C. § 502(a).

Here, the plan places the secured creditor's claim in Class 4, yet the claim is in default and includes a pre-petition arrearage in the amount of \$59,338.92. Compare Claim No. 6 (reflecting delinquency) with 11 U.S.C. 502(a) (deemed allowance).

The Claim indicates that the full balance of the note is now due. Thus, absent a successful motion by the debtor to value the collateral, or a successful objection to the claim, the claim properly belongs in Class 2 of the proposed plan. The debtor has neither filed a motion to value the collateral nor an objection to the claim. Moreover, the debtor's schedules suggest that a successful motion to value collateral is not possible in this case.

Two principles control this analysis. First, Chapter 13 debtors do not have an absolute right to make payments to unimpaired claims directly to the creditor effected. *In re Giesbrecht*, 429 B.R. 682, 685-86 (B.A.P. 9th Cir. 2010); *Cohen v. Lopez (In re Lopez)*, 372 B.R. 40 (9th Cir. BAP 2007), *aff'd*, and adopted by *Cohen v. Lopez (In re Lopez)*, 550 F.3d 1202 (9th Cir.2008) ("a debtor has no absolute right to make such [direct] payments"). The decision to allow, or to not allow, a Chapter 13 payments directly has always been discretionary. *Giesbrecht*, 429 B.R. at 690.

Thus, bankruptcy courts have been afforded the discretion to make the determination of when direct payments may or may not be appropriate based upon the confirmation requirements of § 1325, policy reasons, and the factors set forth by case law, local rules or guidelines. *Lopez*, 372 B.R. at 46-47 ("Reflecting the discretion granted by the Code, different courts and different circuits have different rules on the permissibility of direct payment, a fact unchanged by or since [*Fulkrod v. Barmettler (In re Fulkrod)*, 126 B.R. 584 (9th Cir. BAP 1991) *aff'd sub. nom.*, *Fulkrod v. Savage (In re Fulkrod)*, 973 F.2d 801 (9th Cir.1992)].")

In re Giesbrecht, 429 B.R. at 690 (emphasis added).

Second, at least where a residential mortgage is delinquent on the petition date, merely providing in the plan that the debtor will pay the claim directly does not satisfy § 1325(a)(5). As Judge Lundin commented:

A bald statement that a creditor will be dealt with "outside the plan" fails to satisfy any of the statutory ways in which the Chapter 13 plan can provide for an allowed secured claim under 11 U.S.C. § 1325(a)(5)-- unless the creditor "accepts" being "outside" for whatever it might mean. "Outside" does not preserve the lien of the affected creditor and does not guarantee present value of collateral--rights the secured creditor otherwise has at confirmation under § 1325(a)(5). Placing a secured claim "outside the plan" cannot rescue confirmation of a plan that does not satisfy the confirmation tests for treatment of secured claims.

Keith M. Lundin, *Lundin On Chapter 13*, § 74.8, at ¶ 5.

Argument might be interposed to distinguish the classification problem described by Judge Lundin with respect to § 1325(a)(5) where the residential mortgage is not delinquent on the petition date because as a matter of law those mortgages cannot be modified. 11 U.S.C. § 1322(b)(2), (b)(5), (c)(2) (prohibiting a debtor from modifying a deed of trust applicable to their principal residence, except to cure a delinquency or extending the "last original payment schedule" to a date not later than plan completion).

Moreover, the mandatory form plan in the Eastern District of California Bankruptcy Court specifically contemplates and addresses this eventuality. LBR 3015-1(a). It provides:

Class 1 includes all delinquent secured claims that mature after the completion of this plan, including those secured by Debtor's principal residence.

(a) Cure of defaults. *All arrears on Class 1 claims shall be paid in full by Trustee. The equal monthly installment specified in the table below as the Arrearage dividend shall pay the arrears in full.*

...

(b) Maintaining payments. *Trustee shall maintain all post-petition monthly payments to the holder of each Class 1 claim whether or not this plan is confirmed or a proof of claim is filed.*

Chapter 13 Plan § 3.07, EDC 3-080.

In contrast, Class 4 of the plan for the Eastern District of California contemplates a debtor whose mortgage is fully current on the date the case is filed. It provides:

Class 4 includes all secured claims paid directly by Debtor or third party. Class 4 claims mature after the completion of this plan, are not in default, and are not modified by this plan. These claims shall be paid by Debtor or a third person whether or not a proof of claim is filed[,] or the plan is confirmed.

Id. at § 3.10.

Here, the treatment of the delinquent mortgage in Class 4 (direct payment by the debtor) does not satisfy § 1325(a)(5). See 11 U.S.C. § 1325(a)(5)(B)(ii); *Lundin On Chapter 13* at § 74.8. The creditor has not expressly accepted this treatment in the plan; this court will not infer acceptance from the creditor's silence. 11 U.S.C. § 1325(a)(5)(A); *In re Pardee*, 218 B.R. 916, 939-40 (B.A.P. 9th Cir. 1998), *aff'd*, 193 F.3d 1083 (9th Cir. 1999) (Klein, J. concurring and dissenting) ("[I]mplied acceptance is a troublesome theory that has been largely discredited in all but one application: the formality of acceptance of a chapter 13 plan by a secured creditor whose claim is not being treated in accord with statutory standards may be implied from silence"). In the alternative, the plan does not provide for payment of the allowed amount of the claim, i.e., ongoing mortgage plus the arrearage. 11 U.S.C. § 1325(a)(5)(B). Finally, the plan does not provide for surrender of the collateral. 11 U.S.C. § 1325(a)(5)(C). Moreover, the classification does not comply with the terms of the mandatory form plan for the Eastern District. Plan § 3.07, EDC 03-080; LBR 3015-1(a).

As a result, the plan does not comply with § 1325(a)(5) and will not be confirmed.

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.

Real Time Resolutions, Inc.'s objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

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

17. [23-21751](#)-A-13 **IN RE: QUILLIA LYNCH**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
6-13-2023 [\[14\]](#)

DEBTOR DISMISSED: 6/20/23

Final Ruling

The case was dismissed on June 20, 2023, the order to show cause is discharged as moot.

18. [20-22267](#)-A-13 **IN RE: KEVIN NORMAN**
[RDW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-21-2023 [\[180\]](#)

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

No Ruling

19. [23-21367](#)-A-13 **IN RE: MICAH/TINA METZ**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
6-15-2023 [\[17\]](#)

BRUCE DWIGGINS/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).

Plan Delinquency

The trustee indicates that the plan payments are delinquent in the amount of \$500.00 with another payment of \$500.00 due June 25, 2023. The plan cannot be confirmed if the plan payments are not current.

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 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 debtors failed to produce the following documents: April 2023 and May 2023 bank statements for the debtors Wells Fargo Bank Accounts.

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).

Unexplained Transactions

The trustee has received January, February and March 2023 Wells Fargo bank account statements from the debtors. The statements are voluminous and contain numerous unexplained transactions and transfers. The trustee believes, and the debtors largely confirmed at the meeting of creditors that the following information was either omitted from, or not fully explained, in the bankruptcy schedules and/or Statement of Financial Affairs: 1) information regarding receipt of insurance proceeds resulting from the loss of a vehicle; 2) transfer of insurance proceeds to debtors' son; 3) undisclosed income from Social Security; 4) income from Door Dash; 5) omitted secured creditor; 6) omitted Venmo account, Venmo Visa account, Cash App account, Paypal account, additional Wells Fargo checking account, and Clear Access banking account.

Absent detailed information from the debtors the trustee cannot determine if the plan is feasible. Moreover, given the amount of missing information the court cannot determine whether the plan meets the liquidation requirements of 11 U.S.C. § 1325(a)(4) or if the plan is proposed in good faith, 11 U.S.C. § 1325(a)(3).

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.

20. [22-21669](#)-A-13 **IN RE: LINDSAY/LISA BRAKEL**
[MWB-9](#)

OBJECTION TO CLAIM OF LORI LESTER, CLAIM NUMBER 5
5-15-2023 [[251](#)]

MARK BRIDEN/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

21. [22-21973](#)-A-13 **IN RE: BEATRICE EATON**
[DPC-1](#)

CONTINUED MOTION TO DISMISS CASE
5-22-2023 [\[60\]](#)

MARC VOISENAT/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

Notice: Continued from June 27, 2023

Disposition: Denied

Order: Civil minute order

The hearing on this motion was continued from June 27, 2023, to allow for hearing on the debtor's motion to confirm the chapter 13 plan. The motion to confirm, (MEV-3) has been granted. The motion to confirm was not opposed by the trustee. Accordingly, the court will deny this motion to dismiss.

CIVIL MINUTE ORDER

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

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

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.

22. [22-21973](#)-A-13 **IN RE: BEATRICE EATON**
[MEV-3](#)

MOTION TO CONFIRM PLAN
5-26-2023 [\[65\]](#)

MARC VOISENAT/ATTY. FOR DBT.

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by moving party

Subject: Fourth Amended Chapter 13 Plan, filed May 26, 2023

DEFAULT OF RESPONDENT

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

The debtor seeks confirmation of the Fourth Amended Chapter 13 Plan, ECF No. 68. The plan is supported by Schedules I and J filed, May 26, 2023, ECF No. 64. The Chapter 13 trustee has filed a non-opposition to the motion, ECF No. 75.

SERVICE AND NOTICE

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

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

Matrix

Where the Clerk's Matrix of Creditors is attached to the Certificate of Service form, *such list shall be downloaded not more than 7 days prior to the date of serving the pleadings and other documents and shall reflect the date of downloading.* The serving party may download that matrix either in "pdf label format" or in "raw data format." Where the matrix attached is in "raw data format," signature on the Certificate of Service is the signor's representation that no changes, e.g., additions, deletions, modifications, of the data have

been made except: (1) formatting of existing data; or (2) removing creditors from that list by the method described in paragraph (c) of this rule.

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

On June 3, 2023, an amended notice of hearing was served in this motion, ECF No. 72. The matrix attached to the certificate of service evidencing service of the amended notice of hearing is not dated. See Certificate of Service, ECF No. 73. Because the matrix is undated it does not comply with LBR 7005-1.

In this instance only the court will grant the motion because the amended matrix correctly identifies all parties to be served and the matrix attached to the original certificate of service was properly dated.

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.

23. [19-26277](#)-A-13 **IN RE: JUAN MONGALO AND MILAGROS MONGALO**
ROBLETO
[MMN-11](#)

MOTION TO MODIFY PLAN
5-21-2023 [[230](#)]

MICHAEL NOBLE/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

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

Chapter 13 plan modification is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5)

and 3015(g) and Local Bankruptcy Rule 3015-1. "[T]he only limits on modification are those set forth in the language of the Code itself, coupled with the bankruptcy judge's discretion and good judgment in reviewing the motion to modify." *In re Powers*, 202 B.R. 618, 622 (B.A.P. 9th Cir. 1996).

LBR 3015—(d) (2)

The Chapter 13 trustee contends the plan was not properly served.

Modified Plans Proposed After Confirmation. If the debtor, trustee, or the holder of an allowed unsecured claim modifies the chapter 13 plan after confirmation pursuant to 11 U.S.C. § 1329, *the plan proponent shall file and serve the modified chapter 13 plan together with a motion to confirm it.* Notice of the motion shall comply with Fed. R. Bankr. P. 3015(h), which requires twenty-one (21) days of notice of the time fixed for filing objections, as well as LBR 9014-1(f)(1). LBR 9014-1(f)(1) requires twenty-eight (28) days' notice of the hearing and notice that opposition must be filed fourteen (14) days prior to the hearing. In order to comply with both Fed. R. Bankr. P. 3015 (h) and LBR 9014-1(f)(1), parties in interest shall be served at least thirty-five (35) days prior to the hearing.

LBR 3015-1(d)(2) (emphasis added).

The debtors move to confirm a modified Chapter 13 Plan.

In support of this motion to modify the debtors have filed a Certificate of Service, ECF No. 236. The certificate does not list the Chapter 13 Plan as a document which was served on interested parties. See Section 4, *id.*

LBR 3015-1(d)(2) requires that the debtor serve the plan under consideration with a motion to modify. The purpose of the rule requiring service of the plan with a motion to confirm is to assure adequate notice of the plan terms upon all interested parties. If the plan is not served notice is not properly accomplished.

The court will deny the motion for improper service under LBR 3015-1(d)(2). As such, the court need not reach the other issues raised in the trustee's opposition to the motion.

SERVICE OF SPECIAL NOTICE CREDITORS

The following parties filed a request for special notice: Select Portfolio Servicing Inc.; Tidewater Finance Company; Synchrony Bank; and New Rez, LLC. See ECF Nos. 12, 26, 31, 159.

The certificate of service indicates that special notice parties were served with the objection. See Certificate of Service, p. 2, No. 5, ECF No. 236. However, the moving party has failed to include the proper attachment evidencing that these parties were served.

The clerk maintains a special feature on the court's website which assists parties with the creation of an appropriate matrix evidencing service of special notice parties. Instead of using the clerk's matrix the movant has attached a list from PACER indicating the parties which have filed requests for special notice. It is unclear to the court what is intended by this attachment.

The attachment does not properly memorialize service to special notice parties. Nor does it comply with Form EDC 7-005, Section 6B2b which states, "[a] copy of the Clerk of the Court's matrix of creditors who have filed a Request for Special Notice is appended hereto and numbered Attachment 6B3."

CIVIL MINUTE ORDER

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

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

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

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

24. [23-21578](#)-A-13 **IN RE: GREGORIO TOSTADO**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
6-20-2023 [\[14\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.
\$313 FINAL INSTALLMENT FEE PAID 6/22/2023

Final Ruling

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

25. [19-23082](#)-A-13 **IN RE: DUANE ZAMBOANGA**
[AT-3](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-20-2023 [\[45\]](#)

NICHOLAS WAJDA/ATTY. FOR DBT.
JORDAN O'BRIEN/ATTY. FOR MV.
SUNRIDGE TOWNHOMES OWNERS' ASSOCIATION VS.

No Ruling

26. [23-20782](#)-A-13 **IN RE: AMANDA KUMAR**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
6-21-2023 [\[23\]](#)

THOMAS AMBERG/ATTY. FOR DBT.
\$155 FINAL INSTALLMENT FEE PAID 6/21/2023

Final Ruling

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

27. [22-20491](#)-A-13 **IN RE: MICHELLE PAILLET**
[TBG-2](#)

MOTION TO MODIFY PLAN
6-9-2023 [\[45\]](#)

STEPHAN BROWN/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Modification of a Chapter 13 Plan

Disposition: Denied without prejudice

Order: Civil minute order

The debtor moves for modification of her chapter 13 plan. The plan, notice of hearing, and motion were served on June 9, 2023, ECF No. 49. This provides only 31 days' notice to all parties in interest.

The debtor did not provide a sufficient period of notice of the hearing on the motion, or the time fixed for filing objections. Federal Rule of Bankruptcy Procedure 3015(g) requires not less than 21 days' notice of the time fixed for filing objections and the

hearing to consider a proposed modification of a chapter 13 plan. To comply with both Fed. R. Bankr. P. 3015(g) and Local Bankruptcy Rule 9014-1(f)(1), creditors and parties in interest must be given at least 35 days' notice of the motion. LBR 3015-1(d). Creditors and parties in interest received less than 21 days' notice of the time fixed for filing objections, and the motion and notice of hearing were filed and served less than 35 days prior to the hearing.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the motion is denied without prejudice.

28. [23-22101](#)-A-13 **IN RE: JOHN/NIKKI RADULOVICH**
[LRR-2](#)

MOTION TO EXTEND AUTOMATIC STAY O.S.T.
6-30-2023 [[13](#)]

LE'ROY ROBERSON/ATTY. FOR DBT.
LE'ROY ROBERSON/ATTY. FOR MV.

No Ruling