



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

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

DAY: TUESDAY
DATE: JULY 16, 2024
CALENDAR: 9:00 A.M. CHAPTER 13 CASES

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

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

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

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

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

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

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

Please also note the following:

- Parties in interest may connect to the video or audio feed free of charge and should select which method they will use to appear when signing up.
- Members of the public and the press appearing by **ZoomGov** may only listen in to the hearing using the zoom telephone number. Video appearances are not permitted.
- Members of the public and the press may not listen in to the trials or evidentiary hearings, though they may appear in person in most instances.

To appear remotely for law and motion or status conference proceedings, you must comply with the following guidelines and procedures:

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

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

Unauthorized Recording is Prohibited: Any recording of a court proceeding held by video or teleconference, including screen shots or other audio or visual copying of a hearing is prohibited. Violation may result in sanctions, including removal of court-issued media credentials, denial of entry to future hearings, or any other sanctions deemed necessary by the court. For more information on photographing, recording, or broadcasting Judicial Proceedings, please refer to Local Rule 173(a) of the United States District Court for the Eastern District of California.

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. [23-23501](#)-A-13 **IN RE: MARSHALL FINNEY**
[BLG-3](#)

MOTION TO MODIFY PLAN
6-4-2024 [[45](#)]

CHAD JOHNSON/ATTY. FOR DBT.

Final Ruling

Motion: Modify Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by movant, approved by the trustee

Subject: First Amended Chapter 13 Plan, filed June 4, 2024

DEFAULT OF RESPONDENT

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

The debtor(s) seek approval of the proposed modified Chapter 13 Plan. The plan is supported by Schedules I and J filed on June 4, 2024, ECF No. 47. The Chapter 13 trustee has filed a non-opposition to the motion, ECF No. 57.

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).

Trustee Requests Clarification

The Chapter 13 trustee seeks clarification of certain provisions in the order confirming the modified plan. The changes proposed by the trustee are minor and will insure consistency between the proposed modified plan and the previously confirmed plan. The debtor has agreed to make the requested adjustments in the order modifying the plan. The court will grant the motion and the debtor shall submit an order including following provisions:

- (1) Post-petition mortgage arrears for the months of November 2023 and January 2024 shall be cured through the modified plan;
- (2) Plan payments are - the total paid in through May 2024, is \$18,937.00, then \$4,800.00 x 1 (June 2024), then \$4,783.00 for months 9-50, then \$5,183.00 for months 51-60.
- (3) The Chapter 13 trustee shall not be required to recover funds disbursed to Capital One Auto Finance pursuant to the terms of the previously confirmed plan. All funds disbursed to Capital One Auto Finance are allowed in the amounts previously paid by the Chapter 13 trustee.

The court finds that the debtor has sustained this burden of proof. The court will grant the motion and approve the modification. The debtor shall submit an order confirming the modified plan which is consistent with this ruling.

2. [23-23501](#)-A-13 **IN RE: MARSHALL FINNEY**
[DPC-1](#)

CONTINUED MOTION TO DISMISS CASE
5-17-2024 [\[38\]](#)

CHAD JOHNSON/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

Notice: Continued from June 18, 2024

Disposition: Denied

Order: Civil minute order

The hearing on this motion was continued to allow for hearing on the debtor's motion to modify the chapter 13 plan. The motion to modify (BLG-3) was unopposed and has been granted.

Accordingly, the court will deny the motion to dismiss.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is denied.

3. [24-21906](#)-A-13 **IN RE: JENNIFER ABBOTT**
[PPR-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY CALIFORNIA HOUSING
FINANCE AGENCY
6-3-2024 [\[16\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.
LEE RAPHAEL/ATTY. FOR MV.

Final Ruling

Objection: Creditor's Objection to Confirmation of Plan

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

Disposition: Withdrawn by moving party

Order: Civil minute order

Creditor, California Housing Finance Agency, objects to confirmation of the debtor's plan.

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

WITHDRAWAL OF OBJECTION – Fed. R. Civ. P. 41

On July 11, 2024, the objecting creditor filed a timely withdrawal of its objection under Fed. R. Civ. P. 41; Fed. R. Bankr. P. 9014, 7041.

Federal Rule of Civil Procedure 41 governs the circumstances where a party may withdraw a motion or objection. Fed. R. Civ. P. 41, incorporated by Fed. R. Bankr. P. 7041, 9014(c) (applying rule dismissal of adversary proceedings to contested matters). A motion or objection may be withdrawn without a court order only if it has not been opposed or by stipulation "signed by all parties who have appeared." Fed. R. Civ. P. 41(a)(1)(A). In all other instances, a motion or objection may be withdrawn "only by court order, on terms that the court considers proper." Fed. R. Civ. P. 41(a)(2).

The objection is withdrawn, as no party has appeared in opposition.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the objection to confirmation is withdrawn.

4. [22-23013](#)-A-13 **IN RE: MARY JONES**
[PSB-3](#)

MOTION TO SELL
6-24-2024 [[37](#)]

PAULDEEP BAINS/ATTY. FOR DBT.

Final Ruling

On July 11, 2024, the debtor filed a notice of withdrawal of her motion to sell real property. Fed. R. Civ. P. 41. No party has appeared on opposition to the motion. Accordingly, the motion is withdrawn. No appearances are necessary.

5. [23-23713](#)-A-13 **IN RE: JENNIFER PORE**
[CK-2](#)

MOTION TO CONFIRM PLAN
5-21-2024 [\[34\]](#)

CATHERINE KING/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Confirm Chapter 13 Plan

Notice: LBR 3015-1(d)(1), 9014-1(f)(1); non 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).

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).

Schedules I and J

The debtor has not supported the plan by filing recently amended Schedules I and J. The most recently filed budget schedules were filed at the inception of the case on October 19, 2023, approximately 9 months ago, ECF No. 1. Without current income and expense information the court, interested creditors, and the chapter 13 trustee are unable to determine whether the plan is feasible or whether the plan has been proposed in good faith. See 11 U.S.C. § 1325(a) (3), (6).

The updated schedules are part of the debtor's prima facie case for plan modification and must be filed at the outset of the motion, and not in response to opposition by the trustee or a creditor. This allows the trustee, creditors, and the court, to evaluate the motion in context at the outset. Additionally, it allows sufficient time for opposing parties and the court to evaluate the changes proposed in the debtor's budget. 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.

6. [23-24215](#)-A-13 **IN RE: SANDRA LYMOND**
[MEV-2](#)

MOTION TO CONFIRM PLAN
6-4-2024 [\[81\]](#)

MARC VOISENAT/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: Granted

Order: Civil minute order

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

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

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 \$2,053.75, with another payment of \$1,846.00 due prior to

the date of the hearing on this motion. The plan cannot be confirmed if the plan payments are not current.

Unless the trustee confirms that the plan payments are current the motion will be denied.

Trustee Reply

On July 10, 2024, the trustee filed a Status Report which indicates that the plan payments are now current and that he no longer opposes the motion. As this was the sole basis for the trustee's opposition the court finds that the debtor has proven that the proposed plan meets the statutory requirements for confirmation. Accordingly, the court will grant the motion.

CIVIL MINUTE ORDER

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

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

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

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

7. [24-21615](#)-A-13 **IN RE: MILTON PEREZ**
[HDP-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY 1 OAK VENTURES STEP
FUND LLC
6-7-2024 [[23](#)]

MARY TERRANELLA/ATTY. FOR DBT.
HENRY PALOCI/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); no written opposition required

Disposition: Continued to August 27, 2024, at 9:00 a.m.

Order: Civil minute order

Creditor, 1 Oak Ventures Step Fund, LLC, objects to confirmation of the debtor(s) plan.

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

The court has an obligation to ensure that the proposed Chapter 13 Plan "complies with the provisions of this chapter [Chapter 13] and with the other applicable provisions of this title." 11 U.S.C. § 1325(a)(1). See *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, (2010).

The debtor contends that the objection should be overruled as it is not timely filed. While the objection is untimely the court will allow the objection to be heard and allow the parties to fully brief the matter.

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

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).

Use of Form EDC 7-005 is Mandatory

The service of pleadings and other documents in adversary proceedings, contested matters in the bankruptcy case, and all other proceedings in the

Eastern District of California Bankruptcy Court by *either attorneys, trustees, or other Registered Electronic Filing System Users* shall be documented using the Official Certificate of Service Form (Form EDC 007-005) adopted by this Court.

LBR 7005-1 (emphasis added).

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

Dismissal of Action for Failure to Comply with Local Rules

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

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

Counsel for the objecting creditor is cautioned that the use of the court's form certificate of service EDC 7-005 is required and that failure to comply with the court's Local Rules of Practice may result in sanctions or denial of relief.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on this objection will be continued to August 27, 2024, at 9:00 a.m. The court may rule in this matter without further hearing.

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

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

(B) Respond in Writing to the Objection. If the debtor(s) disagrees with the creditor's objection, the debtor(s) shall file

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

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

8. [24-21230](#)-A-13 **IN RE: LETICIA BARRON**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.
CUSICK
5-8-2024 [\[19\]](#)

MICHAEL HAYS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: Continued from June 4, 2024

Disposition: Overruled

Order: Civil minute order

The hearing on the Chapter 13 trustee's objection to confirmation was continued to allow the parties to augment the evidentiary record. The debtor filed opposition. The trustee has filed a reply as ordered. The court notes that the trustee indicates his reply was filed despite the early debtor opposition. This is appropriate as it is irrelevant that the debtor's opposition was filed prior to the court's order requiring opposition.

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 Chapter 13 trustee objected to the proposed plan contending: (1) the plan was not feasible on multiple bases; and (2) the plan's feasibility relied upon a motion to value collateral. The motion to value the 2016 Toyota was granted on June 5, 2024. Order, ECF No. 36.

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).

Objection

The trustee contends the plan is not feasible as: (1) plan payments are delinquent; (2) a motion to value was required; and (3) the debtor failed to provide sufficient detail regarding her projected income.

The trustee concedes that the plan payments are current and that the motion to value was granted. Reply, ECF No. 40.

The trustee also concedes after review of documents and the opposition filed by the debtor that the proposed plan is feasible. The debtor has explained that her children are currently operating the food truck business on her behalf, which explains why the debtor receives worker's compensation payments as well as income from the food truck.

Absent further objection, the court finds that the proposed plan is feasible and will confirm the plan. The trustee's objection will be overruled.

CIVIL MINUTE ORDER

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

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

The chapter 13 trustee's objection to confirmation has been presented to the court. Having considered the objection,

oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

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

9. [23-20831](#)-A-13 **IN RE: ELIZABETH RODAS BARRIOS**
[FF-5](#)

MOTION FOR COMPENSATION FOR GARY RAY FRALEY, ESQ., DEBTORS
ATTORNEY(S)
5-24-2024 [\[74\]](#)

GARY FRALEY/ATTY. FOR DBT.
DEBTOR DISMISSED: 02/27/24; RESPONSIVE PLEADING

Tentative Ruling

Application: Allowance of Final Compensation and Expense
Reimbursement

Notice: LBR 9014-1(f)(1); written opposition filed by the debtor;
non-opposition filed by the Chapter 13 trustee

Disposition: Approved in part; denied in part

Order: Civil minute order

Compensation Requested: \$10,992.00

Compensation allowed: Post-Petition Services Rendered - \$8,632.00

COMPENSATION AND EXPENSES

In this Chapter 13 case, Gary Fraley has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$2,454.00 for pre-petition services rendered to the debtor and \$10,992.00 in post-petition compensation. At the time of the filing of this motion the applicant held a retainer of \$3,546.00 in his client trust account. Approval of hourly compensation is sought at the following rates: \$480.00 for attorney Gary Fraley; \$180.00 for paralegal services. Exhibit D, ECF No. 78.

The Chapter 13 trustee filed a statement of non-opposition to the motion stating his contention that the compensation requested is reasonable and necessary and incurred for the benefit of the estate. Trustee Non-Opposition, ECF No. 82.

The debtor, who is currently represented by attorney Pete Macaluso, opposes the motion. The debtor contends that: (1) the requested compensation is not reasonable because a Chapter 13 Plan was never confirmed; (2) the monies debtor paid to the applicant are not accurately reflected in the application; (3) the time records of the attorney and paralegal do not accurately reflect the time spent on

individual tasks; and (4) the hourly rate of \$180 for paralegal services is improper.

Status of the Case

The case was dismissed on the motion of the Chapter 13 trustee. The trustee holds no funds.

Qualifications of Counsel

Debtor's counsel is an experienced bankruptcy practitioner:

I have practiced law for 45 years, almost all of which has been in Bankruptcy. I am a State Bar of California Board of Legal Specialization Certified Bankruptcy Law Specialist.

For many years I have taught California State Bar Certified Bankruptcy CLE courses through the National Business Institute and taught at a National Convention of the National Association of Consumer Bankruptcy Attorneys.

I have also published (sacramentobankruptcyattorneys.com) an ebook for everyone considering bankruptcy titled "49 Do's and Don't's you need to know when considering Bankruptcy". It is written for "Ordinary people" in understandable terms without legalese but with my sense of humor.

Declaration of Gary Fraley, 6: 9-19, ECF No. 77.

COMPENSATION

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 13 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3). Reasonable factors include:

- (A) the time spent on such services;
- (B) the rates charged for such services;
- (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
- (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed; and
- (E) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Id.

Confirmation of Plan Not Required

The debtor argues that compensation should be disallowed because a Chapter 13 Plan was not confirmed in this case. A particular result is not required.

The statute does not require that the services result in a material benefit to the estate in order for the professional to be compensated; the applicant must demonstrate only that the services were "reasonably likely" to benefit the estate at the time the services were rendered. The statute is clear and unambiguous.

In re Mednet, 251 B.R. 103, 1qa08 (B.A.P. 9th Cir. 2000)

Mednet noted a split of authority regarding the legal standard to determine whether services are necessary or beneficial to the estate. *Id.* at 107. We rejected a standard that services are only compensable if they result in a material benefit to the estate because this does not comport with the clear meaning of the statute. *Id.* at 108. *Instead, a professional need demonstrate only that the services were reasonably likely to benefit the estate at the time rendered. Id.*

In re Garcia, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)) (emphasis added).

DISCUSSION

Pre-Petition Services

The opposition states that the debtor does **not** oppose the amount of \$2,454.00 for pre-petition compensation. Supplemental Opposition, 5:10-11, ECF No. 85. Absent a motion for disgorgement of fees, which is not before the court, prepetition compensation is governed under state contract law and not under the Bankruptcy Code. Accordingly, the court makes no ruling on the approval of prepetition compensation.

Amounts Paid By Debtor

Evidence of a person's habit or an organization's routine practice may be admitted to prove that on a particular occasion the person or organization acted in accordance with the habit or routine practice. The court may admit this evidence regardless of whether it is corroborated or whether there was an eyewitness.

Fed. R. Evid. 406.

The debtor contends that she paid the applicant as follows:

1. In February of 2023, I gave Mr. Fraley a cashier's (sic) for \$6,300.00 in the form of a cashier's check, See Exhibit #1.
2. In February of 2023, I also gave Mr. Fraley \$375.00 in cash, but I was not given a receipt.
3. In July of 2023, I paid Mr. Piotr, the "Paralegal" \$825.00 in cash, but I was not given a receipt.

Declaration of Debtor, 1:20-25, ECF No. 85.

Conversely, the applicant contends that he received: \$6,300.00 in the form of a cashier's check; and \$13.00 cash. See Declaration of Gary Fraley, 2:17-24, ECF No. 77 and Declaration of Piotr Reysner, 1:25-26, 2:1-5, ECF No. 76. Of these funds \$6,000 was deposited into the applicant's client trust account upon receipt. Declaration of Gary Fraley, *id.*, 3:5-7. Prior to the filing of the case \$2,454.00, representing funds billed for pre-petition services, was transferred from the client trust account. As the court has indicated previously in this ruling the pre-petition funds do not appear to be in dispute.

The applicant disputes receipt of any funds beyond \$6,313.00. In support of the amounts received the applicant has filed as exhibits: (1) Copy of Client Trust Ledger (Exhibit E) showing the entries for payments of \$6,300.00 cashier's check and \$13.00 in cash, ECF No. 78; and (2) copy of Receipt indicating payment of \$6,300.00 cashier's check and \$13.00 in cash dated February 27, 2023 (Exhibit F), ECF No. 78. The Disclosure of Compensation filed in this case also states that the applicant received \$6,000.00 in compensation prior to the filing of the case and that pre-petition compensation was paid to the applicant prior to the filing of the case consistent with the declarations submitted by the applicant. Disclosure of Compensation, ECF No. 1.

Additionally, the applicant has presented evidence regarding his office procedures for receiving funds and documenting same. The applicant does not handle or receive funds personally. The paralegal employed by the applicant receives funds and issues receipts for all monies received, including cash. The funds are managed by attorney Nedra Fraley also employed in the applicant's office. Declaration of Gary Fraley, 2:17-24, 5:20-26, ECF No. 77 and Declaration of Piotr Reysner, 1:25-26, 2:1-5, ECF No. 76.

The bankruptcy documents signed under penalty of perjury by the debtor also show the debtor paid \$6,000.00 in attorney fees to the applicant. Statement of Financial Affairs, Item No. 16; Chapter 13 Plan, § 3.05, ECF No. 78.

The court finds that the debtor's assertions regarding payment of an additional \$1,000.00 in cash are unpersuasive and refuted by the following admissible evidence by the applicant:

(1) declarations of the applicant and the paralegal; (2) the applicant's documentary evidence submitted in support of the application; (3) the debtor's assertions in the Statement of Financial Affairs and Chapter 13 Plan; and (4) testimony regarding the applicant's description of the routine practices in his office. The court finds that \$6,313.00 was paid to the applicant.

Post-Petition Services

The debtor contends the time records of the applicant, and the paralegal are inaccurate. Opposition, ECF No. 84. The opposition questions whether the attorney and/or the paralegal performed the stated amount of time indicated on tasks which the applicant contends were performed. However, the opposition does not state why the time spent on any given task is contested or why she considers the amount of time allotted to any given task excessive.

In support of her opposition the debtor filed a request for judicial notice. One of the documents upon which the debtor relies is the debtor's opposition filed in response to an earlier motion for compensation which the applicant filed. See Opposition of Elizabeth Rodas Barrios, ECF No. 70. This 62 page opposition contains the following notable documents: (1) unsworn statements by the debtor; (2) unsworn statements by Lilian Barrios, the debtor's daughter; (3) a copy of the previously discussed cashier's check for \$6,300.00; (4) a printout of the debtor's transactions with TFS showing plan payments; (5) copies of emails between Lilian Barrios and staff at the applicant's office; (6) statements which appear to be unauthenticated transcripts of emails.

The information in the opposition filed at ECF No. 70 is not discussed or referenced in the debtor's most recently filed opposition.

The court gives no weight to unsworn testimony submitted by the parties. The debtor is represented by counsel in this matter and submitted one declaration in support of her opposition to the motion, ECF No. 85. This document is a cursory statement relating to payments made to the applicant as the court has discussed previously in this ruling. No testimony is provided regarding the debtor's assertions regarding the reasonableness of any of the services the applicant provided, or the reasonableness of the hourly charges for paralegal services.

The debtor was represented in the prosecution of the Chapter 13 proceeding by the applicant beginning February 24, 2023. Declaration of Gary Fraley, 2:11-12, ECF No. 77. The petition was filed on March 17, 2023, to halt a scheduled foreclosure sale on the debtor's residence. The applicant represented the debtor through the dismissal of the case on February 27, 2024.

The purpose of this Chapter 13 Bankruptcy was to give Debtor a chance to sell her home located at 809 Todhunter Ave, West Sacramento, CA 95605 ("the property"), which was on the verge of a foreclosure

Trustee sale then scheduled for March 17, 2023. Debtor had no other creditors (or at least none that were disclosed to my office) other than Shellpoint Mortgage, the servicer on the First Deed of Trust.

Id., 3:17-21.

In her bankruptcy schedules the debtor: (1) valued the Todhunter Avenue property at \$459,000; (2) claimed as exempt \$634,000 in the property; and (3) listed only one obligation owed against the property - a note and deed of trust in the amount of \$307,804.48. Accordingly, the court presumes that the purpose of the Chapter 13 Plan was not only to accomplish a sale of the property but in doing so to protect the debtor's equity in the property of approximately \$151,195.52.

During the pendency of the case the attorney and his staff performed the following services on behalf of the debtor: communicated with the debtor regarding the case; communicated with the mortgage creditor and the Chapter 13 trustee; prepared the debtor for the meeting of creditors; attended the meeting of creditors with the debtor; reviewed the claim filed by the mortgage lender; reviewed the lender's objection to confirmation which was sustained; prepared and filed an amended plan and motion to confirm the amended plan; reviewed and defended the trustee's motion to dismiss (DPC-1); drafted a motion to employ a real estate broker; drafted a motion to sell and employ a second real estate broker.

The court has reviewed the task billing records of the applicant and the applicant's paralegal. The debtor has failed to identify the tasks which she believes are unreasonable or to state any reason why they are unreasonable except generally that a plan was not confirmed. Accordingly, the court finds that the services provided by the attorney and his staff were reasonable.

Attorney and Paralegal Compensation Rates

We have held that "[i]n determining a reasonable hourly rate, the district court should be guided by the rate prevailing in the community for similar work performed by attorneys of comparable skill, experience, and reputation."

Ingram v. Oroudjian, 647 F.3d 925, 928 (9th Cir. 2011) (citing *Chalmers v. City of Los Angeles*, 796 F.2d 1205, 1210-11, (9th Cir. 1986), *opinion amended on denial of reh'g*, 808 F.2d 1373 (9th Cir. 1987)).

The applicant's declaration fails to address the reasonableness of the hourly rates charged for attorney compensation and paralegal compensation, in that the application provides no evidence of the prevailing rates in the community for similar work performed by other professionals.

However, the court may apply its own knowledge in determining a reasonable rate of compensation. In this case the court determines

that reasonable compensation for similar work by an experienced consumer bankruptcy attorney in this district at \$325.00 per hour. Because the applicant is a certified bankruptcy specialist the court increases this hourly rate by 20%. See LBR 2016-1(c)(1)(C). Accordingly, the court determines that the applicant's reasonable hourly rate of compensation is \$390.00.

The attorney services performed on behalf of the debtor totaled 13.4 hours for post-petition work. Exhibit B, ECF No. 78. Accordingly, the attorney compensation approved is calculated as follows: 13.4 hours x \$390.00 per hour. The total is \$5,226.00 in attorney compensation.

The rate of paralegal compensation requested is \$180 per hour. The debtor contends that this hourly rate is not proper.

The court determines the reasonable hourly rate of the paralegal in this case to be \$130.00. This represents approximately one third of the amount charged by the lead attorney on an hourly basis.

The paralegal services performed on behalf of the debtor totaled 26.2 hours for post-petition work. Exhibit B, ECF No. 78. Accordingly, the paralegal compensation approved is calculated as follows: 26.2 hours x \$130.00 per hour. The total is \$3,406.00 in paralegal compensation.

The aggregate amount approved totals \$8,632.00. The court will allow post-petition compensation in the amount of \$8,632.00.

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.

Gary Fraley's application for allowance of final compensation and reimbursement of expenses has been presented to the court. Having considered the motion, the opposition, responses, and oral argument at the hearing, if any, and good cause appearing,

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$8,632.00 for post-petition compensation. As of the date of the application, the applicant held a retainer in the amount of \$3,546.00. The applicant is authorized to draw on any retainer held. The remainder of the allowed amounts shall be paid directly by the debtor; and

IT IS FURTHER ORDERED that all other requested relief is denied.

10. [23-23232](#)-A-13 **IN RE: MAI TRANG LE AND NHAT TRAN**
[PGM-3](#)

MOTION TO CONFIRM PLAN
6-11-2024 [\[88\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

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

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

PLAN FEASIBILITY

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

Plan Delinquency

The trustee indicates that the plan payments are delinquent in the amount of \$3,260.00 with a further payment of \$4,260.00 due on July 25, 2024. The plan cannot be confirmed if the plan payments are not current.

Failure to Provide Business Information

The trustee contends that the debtors have failed to cooperate with him in his review of the debtors' financial affairs. Fed. R. Bankr. P. 4002. At the time the case was filed debtor Nhat Tran was self-employed and operating a business called Smog Zone. Accordingly, the trustee requested the following documents from the debtors: (1) completed Business Questionnaire; and (2) six months of individual Profit and Loss statements. The debtor has failed to provide this information to the trustee.

Sources of Income

The debtors filed a declaration in support of this motion which states, "my husband had to close the business and get a full-time job to allow us to afford to save our home." Declaration of Debtors, 1:25-26, ECF No. 90.

Additionally, the debtors filed supplemental Schedules I and J on June 11, 2024, ECF No. 94. The supplemental Schedule I still lists Nhat Tran's source of income as the Smog Zone. This contradicts the testimony of the debtors which indicates that the business has been closed. Employment income is listed in the supplemental Schedule I, but its source is not disclosed as required. Moreover, as the trustee has indicated the debtors have failed to provide the trustee with any documentary evidence of income. As such the court cannot conclude that the plan is feasible.

The court will deny the motion. Accurate and complete schedules are part of the debtors' prima facie case for confirmation. This information is required at the outset of the motion and not in response to opposition by the trustee.

The court will deny the motion.

DEBTOR REPLY

On July 9, 2024, the debtors filed a timely reply to the trustee's opposition. Reply, ECF No. 100. The reply consists of unsworn factual statements by the debtors' attorney and will not be considered.

Additionally, the reply states that the debtors will supply documentary evidence to the trustee in support of their position. As such the court infers that the documents have not yet been sent to the trustee. The debtors plan to amend Schedule I, supply pay advices, and the information requested about the debtors' now closed business to the trustee. The debtors seek a continuance of the hearing to tender the information to the trustee.

As the court has previously discussed in this ruling, all the information the debtors plan to provide to the trustee in the future, as well as the amended Schedule I accurately reflecting the debtors' financial circumstances, was required at the outset of the motion and not in response to the trustee's opposition to the motion. This information is part of the debtors' prima facie case for plan confirmation. The debtors' request for a continued hearing is denied. Such a request must include a showing of cause (including due diligence) and indicate whether other parties to the proceeding oppose a continuance. LBR 9014-1(j). 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.

11. [24-21835](#)-A-13 **IN RE: MARISOL/PHILLIP CHAVEZ**
[AP-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY LAKEVIEW LOAN
SERVICING, LLC
6-20-2024 [[18](#)]

SETH HANSON/ATTY. FOR DBT.

Final Ruling

Objection: Creditor's Objection to Confirmation of Plan

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

Disposition: Continued to September 10, 2024, at 9:00 a.m.

Order: Civil minute order

Creditor, Lakeview Loan Servicing, LLC, objects to confirmation of the debtor(s) plan.

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

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

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

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on this objection will be continued to September 10, 2024, at 9:00 a.m. The court may rule in this matter without further hearing.

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

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

(B) Respond in Writing to the Objection. If the debtor(s) disagrees with the creditor's objection, the debtor(s) shall file and serve a written response to the objection not later than August 13, 2024; the response shall specifically address each issue raised in the creditor's objection to confirmation, state whether the issue is disputed or undisputed, **and include admissible evidence in support of the debtor's position.** If the debtor(s) file a response under paragraph 3(B) of this order, then the creditor shall file and serve a reply, if any, no later than August 27, 2024. The evidentiary record will close after August 27, 2024; or

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

12. [19-23937](#)-A-13 **IN RE: DEBORAH TURNER**
[DPC-1](#)

MOTION TO DISMISS CASE
6-14-2024 [\[64\]](#)

MARK WOLFF/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: July 2, 2024

Opposition Filed: June 28, 2024 - timely

Cause: 11 U.S.C. § 1307(c)(6) - Plan Delinquency

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the plan payments are delinquent in the amount of \$9,759.00, which is the amount due to complete the Chapter 13 Plan, as the debtor is currently in month 60 of the plan. The trustee also questions whether the debtor has properly paid bonus payments in 2023 or 2024 as provided for in the confirmed Chapter 13 Plan.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF Nos. 68, 69. The debtor's declaration states that the debtor: (1) will make a payment of \$8,000.00 by July 16, 2024; and (2) will pay the balance due by August 25, 2024. The debtor also states that she has not received any bonus payments in 2023, or 2024. See Declaration, ECF No. 69.

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

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. Delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

13. [24-20037](#)-A-13 **IN RE: WILLIAM/LYNDA ANRIG**
[DPC-2](#)

CONTINUED MOTION TO DISMISS CASE
5-3-2024 [\[40\]](#)

MICHAEL HAYS/ATTY. FOR DBT.

No Ruling

14. [24-20037](#)-A-13 **IN RE: WILLIAM/LYNDA ANRIG**
[MOH-2](#)

MOTION TO CONFIRM PLAN
5-17-2024 [\[47\]](#)

MICHAEL HAYS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

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

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

PLAN FEASIBILITY

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

Plan Delinquency

The trustee indicates that the plan payments are delinquent in the amount of \$5,150.00. The plan cannot be confirmed if the plan payments are not current.

The debtor has filed a reply to the opposition contending that a payment of \$5,150 was sent to the trustee on July 1, 2024. The payment was mailed by debtor's counsel. The trustee shall be prepared to apprise the court regarding the status of the plan payments.

Tax Refunds

The trustee contends that the debtor has failed to provide for payment of excess tax refunds into the plan. The debtor filed a reply indicating his willingness to insert this provision in the order confirming the plan. As no creditors will be harmed by the inclusion of this provision the court will allow it in the order confirming the plan absent objection by the Chapter 13 trustee.

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.

15. [24-21038](#)-A-13 **IN RE: PERFECTO GUADIANA**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.
CUSICK
5-8-2024 [\[19\]](#)

MICHAEL HAYS/ATTY. FOR DBT.

Final Ruling

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

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

CIVIL MINUTE ORDER

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

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

16. [24-21440](#)-A-13 **IN RE: ERIKA NORMAN**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.
CUSICK
5-15-2024 [\[14\]](#)

MARY TERRANELLA/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan
Notice: Continued from June 4, 2024
Disposition: Sustained and confirmation denied
Order: Civil minute order

The hearing on the Chapter 13 trustee's objection to confirmation was continued from June 4, 2024, to allow the parties to augment the record and provide additional argument. The parties have complied with the court's briefing schedule.

CONFIRMATION

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

PLAN FEASIBILITY

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

Plan Delinquency

The proposed plan calls for monthly payments of \$6,453.00 for 60 months. Chapter 13 Plan, §§ 2.01, 2.03, ECF No. 3.

The trustee indicates that the plan payments are delinquent in the amount of \$12,906.00. The trustee further reports that no plan payments have been made. Trustee Reply, ECF No. 39. The plan cannot be confirmed if the plan payments are not current.

The court notes that Opposition contends that the plan payments are current. Opposition, 3:19-20, ECF No. 28. However, no such allegation is contained in the debtor's declaration in support of the opposition. Neither has the debtor provided any documentary evidence of plan payments. Declaration of Debtor, ECF No. 29. Accordingly, the court finds that the Chapter 13 trustee's evidence of plan delinquency is persuasive. The court will sustain the objection.

FAILURE TO FILE TAX RETURNS

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

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

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

11 U.S.C. § 1308(a).

The trustee contends that the debtor admitted at the meeting of creditors that 2021 and 2022 tax returns were not filed. The debtor admits that the returns were not filed and states that she has sent information to her bookkeeper so that the returns may be prepared. Declaration of Debtor, 2:15-17, ECF No. 29. No further evidence has been provided that the returns have been provided or that the trustee has received any copies of tax returns. The trustee notes that the meeting of creditors was held and concluded on June 21, 2024. The trustee's Reply to the debtor's opposition was filed on July 2, 2024, and only updated the court regarding the status of plan payments. Accordingly, the court presumes the tax returns have not yet been provided as required.

If the debtor has not filed 2021 and 2022 tax returns, then the plan may not be confirmed as this contravenes the provisions of 11 U.S.C. §§ 1325(a)(9) and 1308.

The court will sustain the objection and need not address the remaining issues raised in the trustee's objection.

CIVIL MINUTE ORDER

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

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

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

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

17. [24-21440](#)-A-13 **IN RE: ERIKA NORMAN**
[RDW-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY SUTTER
COMMERCIAL CAPITAL INC., GAYLE ANSELL AND CURT A SUTTER,
TRUSTEES OF THE ARTHUR H. SUTTER IRREVOCABLE LIFE INSURANCE
TRUST, ARTHUR H. SUTTER, ET AL.
5-15-2024 [\[18\]](#)

MARY TERRANELLA/ATTY. FOR DBT.
REILLY WILKINSON/ATTY. FOR MV.
RESPONSIVE PLEADING

Final Ruling

Objection: Creditor's Objection to Confirmation of Plan

Notice: Continued from June 4, 2024

Disposition: Sustained and confirmation denied

Order: Civil minute order

The hearing on the objection to confirmation filed by Sutter Commercial Capital Inc., Gayle Ansell and Curt A. Sutter, Trustees of the Arthur H. Sutter Irrevocable Life Insurance Trust, Arthur H. Sutter, et. al., was continued from June 4, 2024, to allow the parties to augment the record and provide additional argument. The parties have complied with the court's briefing schedule.

FACTS

Interest in Property

The debtor claims a community property interest in real property located at 448 Royal Tern Drive, Vacaville, California. Schedule A/B, ECF No. 1. The debtor quitclaimed her interest in the property to her spouse, Kevin Norman, on February 7, 2018, and the deed was recorded on February 9, 2018, in Solano County. The debtor states:

My husband and I purchased our home in 2018. At that time, I was not on the loan, and the title company had me sign a quitclaim; I assumed it was because I was not going to be on the loan. I have resided with my husband in the property since it was purchased. We both consider it to be our property, not just his.

Declaration of Debtor, 2:21-24, ECF No. 29.

The objecting creditor is the current payee of a Promissory Note dated January 26, 2018, in the principal amount of \$380,000.00 secured by a First Deed of Trust of same date, which bears interest as specified therein. The debtor's residence on Royal Tern Drive is the collateral. Kevin Norman (the debtor's spouse) is the borrower on the Note. See Claim No. 14. The debtor is not obligated on the note, yet has scheduled the obligation in Schedule D, ECF No. 1.

Proposed Chapter 13 Plan

The proposed Chapter 13 Plan provides for the obligation owed to the objecting creditor in Class 1 as if the debtor was obligated on the note. Chapter 13 Plan, § 3.07, ECF No. 3. The plan provides for ongoing mortgage payments in the amount of \$3,592.35 per month and payments of \$667.00 per month on account of mortgage arrears in the total amount of \$40,000.

Claim No. 14, filed by the objecting creditor, lists pre-petition mortgage arrears of \$29,511.88.

Related Bankruptcy Proceeding

The debtor's spouse, Kevin Norman, filed a Chapter 13 bankruptcy on April 29, 2020. *In re Kevin Norman*, 20-22267, E.D. Cal. Bankr. (2020). The Royal Tern Drive property was listed in Mr. Norman's Schedule A/B which stated that the only person holding an interest in the property was Kevin Norman. *Id.*, Item No. 1, Schedule A/B. The obligation to the objecting creditor was listed in Schedule D which shows that Mr. Norman was the only obligor on the note.

The confirmed plan in Mr. Norman's case provided for the cure of pre-petition mortgage arrears owed on the objecting creditor's note in Class 1 of Mr. Norman's confirmed Chapter 13 Plan. *Id.*, Modified Chapter 13 Plan, ECF No. 132.

Relief from stay in Mr. Norman's case was granted on March 10, 2024, *id.*, ECF No. 233.

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).

Sources of Income

The debtor is not employed. Schedule I, ECF No. 1. The debtor's source of income is her non-filing spouse, Kevin Norman. Schedule I shows that Mr. Norman's income is derived from self-employment, in the net monthly amount of \$10,670.00. *Id.* No further details regarding gross income or expenses are provided in Schedule I. No business income and expense attachments are affixed to the schedule.

The Statement of Financial Affairs provides no information which clarifies the debtor's income. The Statement of Affairs indicates that the *debtor* (not the debtor's spouse) has business income of \$60,000 this year. Statement of Affairs, Item 4, ECF No. 1. However, the Statement of Financial Affairs also states that the debtor did not operate a business during the 4-year period prior to filing the case. *Id.*, Item 27.

The debtor's opposition states:

The debtor uploaded to the Trustee's secure website on June 28, 2024 the profit and loss statement for her non-filing spouse's business for the calendar year

2023 as well as profit and loss statements for January 2024 through May 2024.

Opposition, 2:18-21, ECF No. 28.

While the debtor may have submitted profit and loss documents to the trustee, no such documents are before the court. As previously discussed in this ruling there is no evidence before the court regarding the monthly income and expenses of Kevin Norman's business.

The Chapter 13 trustee has indicated that the debtor has failed to file income tax returns for 2021 and 2022. The court has sustained the trustee's objection, in part because the tax returns have not been provided.

The court finds that the debtor has failed to prove the feasibility of the proposed plan under 11 U.S.C. § 1325(a)(6).

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

CIVIL MINUTE ORDER

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

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

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

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

18. [21-21652](#)-A-13 **IN RE: MARIA PAGTAKHAN**
[DPC-2](#)

MOTION TO DISMISS CASE
6-12-2024 [\[79\]](#)

GEOFF WIGGS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: June 28, 2024

Opposition Filed: June 28, 2024 - timely

Cause: 11 U.S.C. § 1307(c)(6) - Material default of terms of confirmed plan

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(6) as the debtor has failed to provide copies of income tax returns requested by the trustee or to pay income tax refunds into the plan as required under the terms of the confirmed plan.

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

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

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

The debtor has filed a timely opposition, ECF No. 83. The opposition consists solely of unsworn statements by debtor's counsel. As such, the opposition does not comply with LBR 9014-1(f)(1)(B).

A declaration is required to prove the contentions in the opposition and to provide additional relevant information. The opposition states as follows:

Debtor received an annual income tax refund from the California Franchise Tax Board for \$5,306.00; however,

Debtor believes she owes \$15,969.00 to the Internal Revenue Service.

Opposition, 2:2-3, ECF No. 83.

These statements are hearsay. Fed. R. Evid. 802. The court gives no weight to an opposition which fails to provide sworn testimony by the party opposing the motion. Unsworn statements by counsel are not evidence and will not be considered.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. Delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

19. [24-20056](#)-A-13 **IN RE: TYLOR/TAMMY VEST**
[CK-1](#)

MOTION TO CONFIRM PLAN
5-21-2024 [\[26\]](#)

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 filed by the trustee

Disposition: Continued to August 13, 2024, at 9:00 a.m.

Order: Civil minute order

The debtors seek confirmation of their Chapter 13 Plan. The Chapter 13 trustee opposes the motion. The motion will be continued for the following reasons.

Trustee Opposition Unclear

The Chapter 13 trustee opposes the motion to the extent that "the priority claims of the Internal Revenue Service will not be paid in full." Opposition, ECF No. 32. The opposition cites no authority for the trustee's position.

Additionally, the declaration in support of the trustee's opposition indicates that the plan payments are delinquent. However, plan delinquency is not contended in the opposition. Accordingly, the status of the plan payments is unclear to the court.

The court will continue the hearing to allow the trustee to clarify his opposition, cite appropriate legal authority, and augment the evidentiary record as necessary.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the motion is continued to August 13, 2024, at 9:00 a.m. No later than July 23, 2024, the Chapter 13 trustee shall file and serve supplemental argument and evidence in support of his opposition. The opposition shall state with particularity all bases for the trustee's opposition.

IT IS FURTHER ORDERED that the debtors may file and serve a reply no later than July 30, 2024. The evidentiary record will close after July 30, 2024.

20. [24-21361](#)-A-13 **IN RE: JOSHUA WILLIAMS**
[SKI-1](#)

MOTION TO RECONSIDER
6-28-2024 [\[52\]](#)

GABRIEL LIBERMAN/ATTY. FOR DBT.
SHERYL ITH/ATTY. FOR MV.

Final Ruling

Motion: Reconsider

Notice: LBR 9014-1(f)(2); written opposition not required

Disposition: Continued to July 30, 2024, at 9:00 a.m.

Order: Civil minute order

Santander Consumer USA, Inc. requests the court reconsider its order overruling the creditor's objection to confirmation of the proposed Chapter 13 Plan. This motion will be continued to coincide with the trustee's objection to confirmation and the trustee's motion to dismiss the case.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the motion is continued to July 30, 2024, at 9:00 a.m.

21. [24-20964](#)-A-13 **IN RE: FRANK BELL**
[PGM-1](#)

MOTION TO CONFIRM PLAN
6-3-2024 [\[43\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

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

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

PLAN FEASIBILITY

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

Plan Delinquency

The trustee indicates that the plan payments are delinquent in the amount of \$3,506.21. The plan cannot be confirmed if the plan payments are not current.

Third Party Payments

The proposed Chapter 13 Plan, which is 60 months in length, calls for monthly payments of \$3,925.00 beginning June 25, 2024. The debtor's monthly income is derived from the following sources: (1) Social Security - \$1,342.00; (2) contribution from daughter, Stephanie Bell - \$1,500.00; and (3) contribution from granddaughters (unidentified) - \$1,950.00.

Stephanie Bell has filed a declaration in support of the motion; however, the declaration provides no information which proves that Stephanie Bell has the ability or willingness to make such a significant monthly contribution to her father's plan for the duration of the plan. There is no evidence of Ms. Bell's income, neither is there any evidence of her monthly expenses.

The unidentified granddaughters have filed no declaration(s) in support of the motion.

The monthly contributions from third parties totals \$3,450.00 which is a significant sum and represents nearly the entire amount of the proposed monthly plan payment. Without these contributions the plan is not feasible.

This information is part of the debtor's prima facie case for plan confirmation and must be filed at the outset of the motion so that all interested parties may determine whether they wish to oppose or support the motion, and not in response to the trustee's opposition. For this reason, the court finds that the debtor has failed to sustain his burden of proving that the plan is feasible under 11 U.S.C. § 1325(a)(6). The court will deny the motion.

DEBTOR'S CAPACITY

The trustee questions the debtor's capacity to prosecute the case. The debtor is 84 years old and was a party in a proceeding for "Hearing on Elder Abuse Prot Order" in state court on March 13, 2023. Exhibit A, ECF No. 56. The order issued on that date states:

The Court made inquiry of the Protected Party, the 84-year-old father of the other individuals present. The Court opines that the Protected Party is not competent to testify in this matter.

Id.

The trustee also states:

The Trustee has been unable to conduct the First Meeting of Creditors, based on the Debtor's comprehension of the bankruptcy filing, which was originally scheduled for April 18, 2024 at 1:00 p.m., and continued to June 13, 2024 at 2:00 p.m., then continued again and currently scheduled for 2:00 p.m., on July 11, 2024.

Opposition, 2:1-4, ECF No. 54.

DEBTOR REPLY

On July 9, 2024, the debtor filed a timely reply. Reply, ECF No. 62. The reply contains a request for a continued hearing as the debtor's poor health has prevented counsel from obtaining information from him.

The parties shall be prepared to discuss the need for an evidentiary hearing, and a briefing schedule.

The court will hear 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.

22. [19-27670](#)-A-13 **IN RE: CHANDRA FREITAG**
[PSB-1](#)

MOTION TO SELL
6-24-2024 [\[28\]](#)

PAULDEEP BAINS/ATTY. FOR DBT.

No Ruling

23. [19-20771](#)-A-13 **IN RE: MARTIN HERNANDEZ**
[DPC-3](#)

MOTION TO DISMISS CASE
6-14-2024 [\[136\]](#)

MARK BRIDEN/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: July 2, 2024

Opposition Filed: July 2, 2024 - timely

Cause: 11 U.S.C. § 1307(c)(6) - Plan Delinquency

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the plan payments are delinquent in the amount of \$8,343.57, which is the amount due to complete the Chapter 13 Plan, as the debtor is currently in month 64 of the 60-month plan.

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

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

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

The debtor has filed a timely opposition, ECF No. 140. The opposition consists solely of unsworn statements by debtor's counsel. As such, the opposition does not comply with LBR 9014-1(f)(1)(B).

A declaration is required to prove the contentions in the opposition and to provide additional relevant information. The opposition states that the debtor is attempting to borrow \$8,343.27. Opposition, 1:26, ECF No. 140.

This statement is hearsay. Fed. R. Evid. 802. The court gives no weight to an opposition which fails to provide sworn testimony by the party opposing the motion. Unsworn statements by counsel are not evidence and will not be considered.

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

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. Delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

24. [23-22972](#)-A-13 **IN RE: LISSETTE MUNOZ**
[DPC-3](#)

CONTINUED MOTION TO DISMISS CASE
6-3-2024 [\[78\]](#)

GEOFF WIGGS/ATTY. FOR DBT.

No Ruling

25. [23-22972](#)-A-13 **IN RE: LISSETTE MUNOZ**
[GW-1](#)

MOTION TO CONFIRM PLAN
6-10-2024 [\[83\]](#)

GEOFF WIGGS/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 without prejudice

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 motion will be denied without prejudice for the following reasons.

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).

In this case the matrix attached to the certificate of service is not dated. See Certificate of Service, ECF No. 88. Accordingly, service of the motion does not comply with LBR 7005-1. The court will deny the motion without prejudice.

SPECIAL NOTICE CREDITORS

The motion will be denied without prejudice as the moving party has failed to properly provide notice to all parties as required.

The following parties filed a request for special notice: Nationstar Mortgage. See ECF No. 8.

As indicated in the Certificate of Service, the special notice parties were not served with the motion. See *Certificate of Service*, p. 2, no. 5, ECF No. 88. Moreover, there is no attachment which includes the special notice parties in the matrix. Counsel is reminded that a matrix of creditors requesting special notice is easily compiled using the clerk's feature developed for this purpose. This feature is located on the court's website.

NOTICE

"The due process requirements for notice are relatively minimal; they merely require notice 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" *In re 701 Mariposa Project, LLC*, 514 B.R. 10, 15 (B.A.P. 9th Cir. 2014) (citing *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 94 L.Ed. 865 (1950)).

Rules 9013 and 9007

A request for an order, except when an application is authorized by the rules, shall be by written motion, unless made during a hearing. The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought. Every written motion, other than one which may be considered ex parte, shall be served by the moving party within the time determined under Rule 9006(d). The moving party shall serve the motion on:

- (a) the trustee or debtor in possession and on those entities specified by these rules; or
- (b) *the entities the court directs if these rules do not require service or specify the entities to be served.*

Fed. R. Bankr. P. 9013 (emphasis added).

When notice is to be given under these rules, the court shall designate, if not otherwise specified herein, the time within which, *the entities to whom*, and the form and manner in which the notice shall be given. When feasible, the court may order any notices under these rules to be combined.

Fed. R. Bankr. P. 9007 (emphasis added).

Rules 9013 and 9007 allow the court to designate additional parties which must receive notice of a motion and opportunity to be heard.

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

When notice of a motion is served without the motion or supporting papers, the notice of hearing shall also succinctly and sufficiently describe the nature of the relief being requested and set forth the essential facts necessary for a party to determine whether to oppose the motion. *However, the motion and supporting papers shall be served on those parties who have requested special notice and those who are directly affected by the requested relief.*

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

In the Eastern District the court has ordered that parties which have filed requests for special notice must receive notice of motions. LBR 9014-1(d) (3) (B) (iv) includes creditors which have filed requests for special notice as parties who must be served with all motions and supporting papers.

LBR 9014-1(d) (3) (B) (iv) does not limit the notice required to special notice creditors. Thus, the moving party is required to serve its motion on creditors who have filed requests for special notice.

Dismissal of Action for Failure to Comply with Local Rules

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

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

Because the moving party has failed to comply with Local Rules regarding service of the motion the court will deny the motion without prejudice.

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.

CIVIL MINUTE ORDER

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

Debtor's Motion to Confirm 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.

26. [24-21673](#)-A-13 **IN RE: AARON MCCONVILLE**

MOTION TO VALUE COLLATERAL OF REGIONAL ACCEPTANCE
CORPORATION
5-24-2024 [\[28\]](#)

AARON MCCONVILLE/ATTY. FOR MV.

Final Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle]

Disposition: Denied without prejudice

Order: Civil minute order

The debtor seeks to value collateral consisting of a motor vehicle. The motion will be denied without prejudice for the following reasons.

MOTION NOT PROPERLY SERVED

The moving party is required to serve the responding party with the motion to value collateral. Fed. R. Bankr. P. 7004. The Chapter 13 trustee must also be served with the motion, Fed. R. Bankr. P. 9013. The certificate of service filed in this matter does not indicate that any parties were served with the motion, because the certificate of service contains no attachment listing the parties which were served or the addresses at which they were served. Certificate of Service, ECF No. 35. Accordingly, the court will deny the motion without prejudice.

VIOLATION OF LBR 9014-(c) (1)

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

This motion did not include a docket control number.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the motion is denied without prejudice.

27. [24-21673](#)-A-13 **IN RE: AARON MCCONVILLE**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
6-17-2024 [[38](#)]

DAVID CUSICK/ATTY. FOR MV.

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 September 10, 2024, at 9:00 a.m.

Order: Civil minute order

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

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

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

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on this objection will be continued to September 10, 2024, at 9:00 a.m. The court may rule in this matter without further hearing.

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

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

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection not later than August 13, 2024; the response shall specifically address each issue raised in the trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than August 27, 2024. The evidentiary record will close after August 27, 2024; or

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

28. [24-21779](#)-A-13 **IN RE: LAURA ZAMORA**
[MB-1](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF SACRAMENTO LAW
GROUP LLP DEBTORS ATTORNEY(S)
6-11-2024 [\[24\]](#)

MICHAEL BENAVIDES/ATTY. FOR DBT.
DEBTOR DISMISSED: 05/20/24

Final Ruling

Application: Allowance of Final Compensation and Expense
Reimbursement

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

Disposition: Denied without prejudice

Order: Civil minute order

Attorney Michael Benavides seeks an order allowing final compensation and reimbursement of expenses in this Chapter 13 case. The Chapter 13 trustee has filed a non-opposition to the motion.

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

INSUFFICIENT NOTICE

"The due process requirements for notice are relatively minimal; they merely require notice 'reasonably calculated, under all the

circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" *In re 701 Mariposa Project, LLC*, 514 B.R. 10, 15 (B.A.P. 9th Cir. 2014) (citing *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 94 L.Ed. 865 (1950)).

B) Notice.

- (i) The notice of hearing *shall advise potential respondents whether and when written opposition must be filed, the deadline for filing and serving it, and the names and addresses of the persons who must be served with any opposition.*
- (ii) If written opposition is required, the notice of hearing shall advise potential respondents that the failure to file timely written opposition may result in the motion being resolved without oral argument and the striking of untimely written opposition.
- (iii) *The notice of hearing shall advise respondents that they can determine whether the matter has been resolved without oral argument or whether the court has issued a tentative ruling, and can view [any] pre-hearing dispositions by checking the Court's website at www.caeb.uscourts.gov after 4:00 P.M. the day before the hearing, and that parties appearing telephonically must view the pre-hearing dispositions prior to the hearing.*
- (iv) When notice of a motion is served without the motion or supporting papers, the notice of hearing shall also succinctly and sufficiently describe the nature of the relief being requested and set forth the essential facts necessary for a party to determine whether to oppose the motion. However, the motion and supporting papers shall be served on those parties who have requested special notice and those who are directly affected by the requested relief.

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

The notice of motion in this case fails to comply with LBR 9014-1(B) (i), (iii). The notice fails to state whether written opposition to the motion is required or advise respondents how the motion may be opposed. The notice also fails to advise respondents how they can determine whether the matter has been resolved. Notice of Motion, ECF No. 25.

CERTIFICATE OF SERVICE INCOMPLETE

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

. . .

LBR 7005-1.

The applicant used Form EDC 007-005 in memorializing service in this motion. However, the form is not completed in full. Item 4 fails to list the documents which were served by the applicant. Accordingly, the court cannot determine if service complied with Fed. R. Bankr. P. 9013, 7004, LBR 7005-1. Certificate of Service, p. 2, Item 4, ECF No. 27.

MOTION LISTS INCORRECT TIME OF HEARING

The motion filed in this case lists the time of the hearing as 2:00 p.m. Motion, ECF No. 24. This information contravenes the information in the notice of the motion which correctly indicated the time of the hearing as 9:00 a.m.

The court notes that this information caused confusion to other parties as the Chapter 13 trustee filed his non-opposition with an incorrect designation of the time as well as location of the hearing. The trustee's non-opposition states that the hearing will take place at 2:00 p.m. before the Hon. Ronald H. Sargis in Department 33. Non-Opposition, ECF No. 32.

The court will not presume the conclusion other parties may have reached, including the debtor, when presented with inconsistent information regarding the time and location of the hearing.

EXHIBITS COMBINED WITH DECLARATION

Exhibits shall be filed as a separate document from the document to which it relates and identify the document to which it relates (such as "Exhibits to Declaration of Tom Swift in Support of Motion for Relief From Stay"). A separate exhibit document may be filed with the exhibits which relate to another document, or all of the exhibits may be filed in one document, which shall be identified as "Exhibits to [Motion/Application/Opposition/...]."

LBR 9004-2(a)(1).

The exhibits filed in support of the motion were attached to the declaration of Michael Benavides. This contravenes LBR 9004-2(a)(1) which requires that the exhibits be filed as a separate document.

The court will deny the motion without prejudice.

CIVIL MINUTE ORDER

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

Michael Benavides's Application for Allowance of Final Compensation 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.

29. [23-24382](#)-A-13 **IN RE: VICTOR/ELMY HOPPER**
[CK-1](#)

MOTION TO CONFIRM PLAN
5-20-2024 [\[35\]](#)

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 filed by the trustee

Disposition: Continued to August 27, 2024, at 9:00 a.m.

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.

CONFIRMATION

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

The trustee objects to the filing of the petition in this case, claiming that the petition was not filed in good faith. 11 U.S.C. §1325(a)(7). At the center of the trustee's objection are

inconsistent statements made in the petition, schedules, and testimony of the debtor regarding the debtors' ownership interests, if any, in Pit Stop Inc., and/or Pitt Stop El Segundo.

The debtor's declaration in support of this motion lacks sufficient detail for the court to find that the petition was filed in good faith. The declaration refers the court to a previous declaration filed regarding a previous plan. Declaration, ECF No. 37.

The court will continue the hearing on this motion to allow the debtors to file a detailed declaration and exhibits refuting the trustee's contention that the petition was not filed in good faith. The declaration should accurately reference and explain any inconsistencies which may appear in the various documents filed 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.

IT IS ORDERED that the hearing on this objection will be continued to August 27, 2024, at 9:00 a.m. The court may rule in this matter without further hearing.

IT IS FURTHER ORDERED that the debtor(s) shall file and serve additional evidence and argument in response to the objection not later than July 30, 2024; the response shall specifically address each issue raised in the trustee's objection to confirmation, state whether the issue is disputed or undisputed, **and include admissible evidence in support of the debtor's position.**

IT IS FURTHER ORDERED that the trustee shall file and serve a reply, if any, no later than August 13, 2024. The evidentiary record will close after August 13, 2024.

30. [23-20883](#)-A-13 **IN RE: MELISSA CHAVEZ**
[DPC-1](#)

MOTION TO DISMISS CASE
6-11-2024 [\[74\]](#)

PETER CIANCHETTA/ATTY. FOR DBT.

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: July 2, 2024

Opposition Filed: July 2, 2024 - timely

Cause: 11 U.S.C. § 1307(c)(6) - failure to provide tax returns

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(6) as the debtor has failed to provide a copy of her 2023 tax returns to the Chapter 13 trustee as required under the confirmed plan.

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

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

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

The debtor has filed a timely opposition which consists solely of unsworn statements by debtor's counsel. Opposition, ECF No. 78.

The opposition does not comply with LBR 9014-1(f)(1)(B). A declaration is required to prove the contentions in the opposition and to provide additional relevant information. For example, the opposition states that the tax return was sent to the trustee on June 12, 2024. However, it does not state who sent the returns to the trustee or how they were transmitted. If the debtor sent the returns, then the statement is hearsay. Fed. R. Evid. 802. If counsel forwarded them to the trustee the statement is not admissible as it is not verified under oath.

The opposition also claims that the Chapter 13 trustee is not entitled to any refunds as the refunds were intercepted. Again, there is no admissible evidence the refunds were intercepted or by whom.

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

The debtor has failed to comply with the terms of the confirmed plan. The court will grant the motion.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The debtor has failed to comply with the terms of the confirmed chapter 13 plan in this case. The debtor has failed to provide copies of the tax returns to the trustee as required. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

31. [23-22887](#)-A-13 **IN RE: ALBERTO CONDINO**
[DPC-1](#)

MOTION TO DISMISS CASE
6-14-2024 [\[23\]](#)

PAULDEEP BAINS/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Withdrawn by moving party

Order: Civil minute order

Opposition Due: July 2, 2024

Opposition Filed: July 2, 2024 - timely

Cause: 11 U.S.C. § 1307(c)(6) - Plan Delinquency

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the plan payments are delinquent in the amount of \$4,000.00, with one payment(s) of \$1,000.00 due before the hearing on this motion.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor and Exhibits, ECF Nos. 27, 28, 29. The debtor's declaration states that the debtor has scheduled two payments through TFS on June 19, 2024, and June 22, 2024. The payments total \$5,000 and will bring the plan payment current. See Declaration, ECF No. 28. Exhibit A includes copies of payments sent through TFS and shows that the debtor has scheduled payments to the trustee as indicated and that the July 2024 plan payment of \$1,000 was also scheduled. Exhibit A, ECF No. 29.

The Chapter 13 trustee shall be prepared to apprise the court regarding the status of payments under the plan.

The opposition does not fully resolve the grounds for dismissal. A delinquency still exists as of the date of the opposition, as it is unclear from the evidence if the trustee has received the payments which were scheduled. A statement of intent to pay the delinquency on or before a future date is not equivalent to cure of the delinquency. The court is unable to deny the motion given the outstanding delinquency.

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

On July 10, 2024, the Chapter 13 trustee filed a notice of dismissal of his motion to dismiss. Notice of Dismissal, ECF No. 31. The notice states:

DAVID P. CUSICK, STANDING CHAPTER 13 TRUSTEE, hereby dismisses the Trustee's Motion to Dismiss pursuant to FRCP 41(a)(1)(A)(i), and FRBP 9014 and 7041, as: The

debtor is current in plan payments to the Trustee under the confirmed plan through June 2024 and the Trustee no longer wishes to pursue dismissal of the case at this time. WHEREFORE, the Trustee asks that the Court note that the Trustee's Motion to Dismiss has been dismissed.

Id., 1:21-27.

Trustee May Not Unilaterally Dismiss Motion

Because the debtor has filed opposition to the motion, the trustee may not unilaterally dismiss his motion. Fed. R. Civ. P. 41.

However, the court construes the trustee's "dismissal" as a request to dismiss or withdraw his motion.

Federal Rule of Civil Procedure 41 governs the circumstances where a party may withdraw a motion or objection. Fed. R. Civ. P. 41, *incorporated by* Fed. R. Bankr. P. 7041, 9014(c) (applying rule dismissal of adversary proceedings to contested matters). A motion or objection may be withdrawn without a court order only if it has not been opposed or by stipulation "signed by all parties who have appeared." Fed. R. Civ. P. 41(a)(1)(A). In all other instances, a motion or objection may be withdrawn "only by court order, on terms that the court considers proper." Fed. R. Civ. P. 41(a)(2).

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

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the motion to dismiss is withdrawn.

32. [24-21087](#)-A-13 **IN RE: MAN CHENG**
[PLC-2](#)

MOTION TO CONFIRM PLAN
6-6-2024 [\[31\]](#)

PETER CIANCHETTA/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

33. [24-21088](#)-A-13 **IN RE: JEANNA TOWNER**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.
CUSICK
5-6-2024 [\[27\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: Continued from June 4, 2024

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

CONFIRMATION

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

PLAN FEASIBILITY

The proposed plan must be feasible. 11 U.S.C. § 1325(a)(6). Feasibility is a "factual determination" as to the plan's "reasonable likelihood of success." *First Nat'l Bank of Boston v. Fantasia (In re Fantasia)*, 211 B.R. 420, 423 (B.A.P. 1st Cir. 1997). The bankruptcy court needs to "be satisfied that the debtor has the present as well as the future financial capacity to comply with the terms of the plan." *Id.* As one court summarized feasibility, "Thus, a plan is not feasible and is not confirmable if a debtor's income will not support the plan's proposed payments. *In re Barnes*, 275 B.R. 889, 894 (Bankr. E.D. Cal.2002) ("[T]he debtors showed no disposable income with which to fund a plan.... [T]he debtors have

been unable to actually pay the amount projected ... to the trustee."); *In re Bernardes*, 267 B.R. 690, 695 (Bankr. D.N.J. 2001) ("While the feasibility requirement is not rigorous ... the plan proponent must, at minimum, demonstrate that the Debtor's income exceeds expenses by an amount sufficient to make the payments proposed by the plan."); *In re Wilkinson*, 99 B.R. 366, 369 (Bankr. N.D. Ohio 1989) ("[D]ebtors will not be able to comply with the plan and make all payments thereunder."). *In re Buccolo*, 397 B.R. 527, 530 (Bankr. D.N.J. 2008), *aff'd*, 2009 WL 2132435 (D.N.J. July 13, 2009).

Plan Delinquency

The trustee indicates that the plan payments are delinquent in the amount of \$2,035.00 as of April 25, 2024. Two additional payments have come due since the trustee's objection. The plan cannot be confirmed if the plan payments are not current.

The court previously ordered as follows:

If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection not later than June 18, 2024; the response shall specifically address each issue raised in the trustee's objection to confirmation, state whether the issue is disputed or undisputed, **and include admissible evidence in support of the debtor's position.** If the debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than July 2, 2024. The evidentiary record will close after July 2, 2024; or . . .

Order, ECF No. 56 (emphasis added).

The debtor contends in her opposition that payments were tendered to the trustee via TFS. However, the response consists of unsworn statements made by debtor's counsel and is not accompanied by any admissible evidence. Response, ECF No. 47.

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

Misclassified Mortgage Obligation

The proposed plan provides for payment of arrears owed on real property located at 4015 William Way, Camino, California in Class 1, as though a foreclosure sale did not occur. Chapter 13 Plan, Section 3.07, ECF No. 14.

On July 3, 2024, this court entered an order granting relief from the automatic stay to Veritas Capital, LLC, regarding the real property. The court held that the debtor's interest in the real property was extinguished by a pre-petition foreclosure sale.

As such, the Chapter 13 Plan incorrectly provides for payment to Veritas Capital, LLC, in Class 1.

Accordingly, this plan may not be confirmed as its proposed terms are inconsistent with the court's previous orders.

The objection is sustained, and confirmation is denied.

CIVIL MINUTE ORDER

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

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

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.

34. [24-21689](#)-A-13 **IN RE: ANNETTE MATTHEWS**
[DPC-2](#)

MOTION TO DISMISS CASE
6-11-2024 [\[32\]](#)

DEBTOR DISMISSED: 06/20/24

Final Ruling

This case was dismissed on June 20, 2024. This motion is removed from the calendar as moot. No appearances are required.

35. [24-21795](#)-A-13 **IN RE: VINCENT GONZALES**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
6-14-2024 [\[14\]](#)

JULIUS CHERRY/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 September 10, 2024, at 9:00 a.m.

Order: Civil minute order

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

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

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

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on this objection will be continued to September 10, 2024, at 9:00 a.m. The court may rule in this matter without further hearing.

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

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

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection not later than August 13, 2024; the response shall specifically address each issue raised in the trustee's objection to confirmation, state whether the issue is

disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than August 27, 2024. The evidentiary record will close after August 27, 2024; or

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

36. [22-23196](#)-A-13 **IN RE: MARCEL LONGMIRE AND BRANDI WASHINGTON**
[BLG-2](#)

MOTION TO INCUR DEBT
6-13-2024 [\[31\]](#)

CHAD JOHNSON/ATTY. FOR DBT.

No Ruling

37. [23-23697](#)-A-13 **IN RE: SAM/CHREB ROS**
[MMM-1](#)

MOTION TO CONFIRM PLAN
5-17-2024 [\[47\]](#)

MOHAMMAD MOKARRAM/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Confirm Chapter 13 Plan

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

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 filed a non-opposition to the motion, ECF No. 56. However, as the court noted in its ruling under CJK-1, creditor Land Home Financial opposes the motion, objecting to confirmation.

OPPOSITION

Land Home Financial has incorrectly filed its opposition to the proposed Chapter 13 Plan as an objection to confirmation. The plan before the court is the Chapter 13 Plan filed May 17, 2024, ECF No. 49. However, the plan is not identified as an "amended" Chapter 13

Plan in the title of the document which may account for the confusion which resulted in the filing of an objection to confirmation instead of opposition to the motion to confirm (MMM-1). This in turn created confusion for the clerk who must docket all documents as well as the court which must review relevant documents for each matter on the calendar.

The court deems the objection to confirmation (CJK-1) to be opposition to the plan which is the subject of the debtor's motion to confirm (MMM-1).

CONFIRMATION

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

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

Creditor, Lan Home Financial 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 creditor filed its claim on December 27, 2023. The court notes that the Chapter 13 trustee failed to raise this in opposition to the motion. The trustee shall be prepared to address this issue at the hearing.**

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 \$3,550.06, which exceeds the amount of one monthly payment. Compare Claim No. 23 (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.

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.

38. [23-23697](#)-A-13 **IN RE: SAM/CHREB ROS**
[CJK-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY LAND HOME FINANCIAL
7-2-2024 [\[53\]](#)

MOHAMMAD MOKARRAM/ATTY. FOR DBT.
CHRISTINA KHIL/ATTY. FOR MV.

Tentative Ruling

Objection: Creditor's Objection to Confirmation of Plan

Notice: LBR 3015-1(c)(4), 9014-1(f)(2)

Disposition: 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).

AMENDED PLAN IS BEFORE THE COURT

If the debtor modifies the chapter 13 plan before confirmation pursuant to 11 U.S.C. § 1323, the debtor 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. 2002(a)(9), 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. 2002(b) 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)(1).

Land Home Financial has incorrectly filed its opposition to the proposed Chapter 13 Plan as an objection to confirmation. The plan before the court is the Chapter 13 Plan filed May 17, 2024, ECF No. 49. However, the plan is not identified as an "amended" Chapter 13 Plan in the title of the document which may account for the confusion which resulted in the filing of an objection to confirmation instead of opposition to the motion to confirm (MMM-1). This in turn created confusion for the clerk who must docket all documents as well as the court which must review relevant documents for each matter on the calendar.

The court deems the objection to confirmation (CJK-1) to be opposition to the plan which is the subject of the debtor's motion to confirm (MMM-1). For the reasons indicated in its ruling in the motion to confirm, MMM-1, the court denies confirmation of the 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.

Lan Home Finances'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 court deems the objection to confirmation (CJK-1) to be opposition to the plan which is the subject of the debtor's motion to confirm (MMM-1). For the reasons indicated in its ruling in the motion to confirm, MMM-1, the court denies confirmation of the plan.