

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

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

DAY: TUESDAY
DATE: AUGUST 2, 2022
CALENDAR: 9:00 A.M. CHAPTER 13 CASES

RULINGS

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

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

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

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

CHANGES TO PREVIOUSLY PUBLISHED RULINGS

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

ERRORS IN RULINGS

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

1. [22-20800](#)-A-13 **IN RE: PAMELA PARRISH**
[PSB-4](#)

MOTION TO CONFIRM PLAN
6-9-2022 [\[43\]](#)

PAULDEEP BAINS/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: Granted

Order: Prepared by the movant, approved by the trustee

Subject: First Amended Chapter 13 Plan, June 9, 2022

DEFAULT OF RESPONDENT

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

Debtor seeks confirmation of her First Amended Chapter 13 Plan, ECF No. 47. The feasibility of the plan is supported by the debtor's Schedules I and J, properly filed April 27, 2022, ECF No. 19. The chapter 13 trustee has filed a non-opposition to the motion, ECF No. 59.

CHAPTER 13 PLAN CONFIRMATION

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

The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

2. [22-21405](#)-A-13 **IN RE: JENNIFER NEELY**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
7-8-2022 [\[19\]](#)

JUSTIN KUNEY/ATTY. FOR DBT.
7/11/2022 INSTALLMENT FEE PAID \$158

Final Ruling

The filing fee installment was paid on July 11, 2022. The Order to Show Cause is discharged, and the case will remain pending.

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

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
7-7-2022 [\[54\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Tentative Ruling

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

4. [22-20533](#)-A-13 **IN RE: LEEANN ATTERBERRY**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
7-12-2022 [\[41\]](#)

MICHAEL HAYS/ATTY. FOR DBT.
7/13/2022 FINAL INSTALLMENT FEE PAID \$2

Final Ruling

The installment fee has been paid. The Order to Show Cause is discharged. The case will remain pending.

5. [22-20544](#)-A-13 **IN RE: MARK KELLEY**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
7-12-2022 [\[43\]](#)

MICHAEL REID/ATTY. FOR DBT.

Final Ruling

This case was dismissed on July 20, 2022. This matter will be removed from the calendar as moot.

6. [22-20846](#)-A-13 **IN RE: DANA HERNANDEZ**
[NCK-3](#)

MOTION TO DISMISS CASE
6-22-2022 [\[35\]](#)

NOEL KNIGHT/ATTY. FOR DBT.

Final Ruling

This case was dismissed on July 26, 2022. This matter will be removed from the calendar as moot.

7. [22-20948](#)-A-13 **IN RE: SAMER AYOUB**
[DPC-3](#)

OBJECTION TO DISCHARGE BY DAVID P. CUSICK
6-27-2022 [\[28\]](#)

MARY TERRANELLA/ATTY. FOR DBT.
DEBTOR DISMISSED: 06/30/22

Final Ruling

This case was dismissed on June 30, 2022. This objection is removed from the calendar as moot. No appearances are required.

8. [17-26656](#)-A-13 **IN RE: STACY/MICHAEL SAVOCA**
[CLH-6](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF HILL & MORRIS
FOR CINDY LEE HILL, DEBTORS' ATTORNEY
6-29-2022 [\[123\]](#)

CINDY HILL/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Application: Allowance of Interim Compensation and Expense
Reimbursement

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

Disposition: Approved

Order: Civil minute order

Compensation: \$4,480.00

Reimbursement of Expenses: \$283.20

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 application was required not less than 14 days before the hearing on the application. 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).

COMPENSATION AND EXPENSES

In this Chapter 13 case, Hill & Morris, Attorneys at Law has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$4,480.00 and reimbursement of expenses in the amount of \$283.20. The chapter 13 trustee has filed a non-opposition to the motion. The motion is also supported by a declaration of the debtors.

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).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on an interim basis. Such amounts shall be perfected, and may be adjusted, by a final application for compensation and expenses, which shall be filed prior to case closure.

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.

Hill & Morris, Attorneys at Law's application for allowance of interim compensation and reimbursement of expenses has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the application,

IT IS ORDERED that the application is approved on an interim basis. The court allows interim compensation in the amount of \$4,480.00 and reimbursement of expenses in the amount of \$283.20. The aggregate allowed amount equals \$4,763.20. The amount of \$4,763.20 shall be allowed as an administrative expense to be paid through the plan.

IT IS FURTHER ORDERED that the fees and costs are allowed pursuant to 11 U.S.C. § 331 as interim fees and costs, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure.

IT IS FURTHER ORDERED that the trustee is authorized to pay the fees allowed by this order from the available funds of the plan in a manner consistent with the terms of the confirmed plan.

9. [22-20063](#)-A-13 **IN RE: NATHANIEL SOBAYO**
[DPC-2](#)

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

No Ruling

10. [19-27880](#)-A-13 **IN RE: JONATHAN GARCIA**
[DPC-4](#)

CONTINUED MOTION TO DISMISS CASE
5-11-2022 [[108](#)]

RICHARD JARE/ATTY. FOR DBT.
NEIL ENMARK/ATTY. FOR MV.

No Ruling

11. [19-27880](#)-A-13 **IN RE: JONATHAN GARCIA**
[RLJ-3](#)

AMENDED MOTION TO MODIFY PLAN
5-26-2022 [\[118\]](#)

RICHARD JARE/ATTY. FOR DBT.

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

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

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

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 on August 11, 2020, nearly 23 months ago, ECF No. 90. Without current income and expense information the court 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 court does note that the debtor filed Supplemental Schedules I and J on July 26, 2022. These were untimely, and not considered. A debtor seeking to modify his Chapter 13 plan must proffer all evidence necessary to establish a prima facie case with the motion, that is not later than 35 days prior to the hearing on the motion. LBR 3015-1(d).

CIVIL MINUTE ORDER

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

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

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

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

12. [22-20496](#)-A-13 **IN RE: LAMBERT DAVIS**
[PGM-1](#)

MOTION TO CONFIRM PLAN
6-21-2022 [\[45\]](#)

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).

LIQUIDATION

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

. . . .

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

. . . .

11 U.S.C. § 1325(a)(4).

The trustee contends the plan fails the liquidation test. The trustee calculates that the debtor has \$61,050.00 equity in nonexempt assets, yet the plan calls for a 0% dividend to unsecured creditors with no priority creditors to be paid in the plan. The court will deny confirmation of the amended plan.

PLAN FEASIBILITY

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

Mathematical Feasibility

The trustee opposes confirmation of the plan contending the plan is not mathematically feasible. See 11 U.S.C. §1325(a)(1) & (6).

The plan is overextended due to the Bank of New York Mellon Trust Company's filed claim. The plan provides for mortgage arrears to the creditor in the amount of \$25,456.77, yet the claim lists arrears in the amount of \$345,307.30. See Claim No. 2. The debtor has not filed an objection to the claim.

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

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

Declaration Inconsistent With Plan Terms

The declaration filed in support of the motion to confirm contains language which contradicts the terms of the plan. The declaration of the debtor states "[t]he proposed plan pays 100% to my unsecured creditors, over a total of 60 months." See Declaration, ECF No. 48, 1:20-22.

The amended plan calls for 0% to be paid to unsecured creditors. See Plan, ECF No. 47, Section 3.14.

The court will not presume the conclusion reached by a creditor upon receipt of documents containing inconsistent information.

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.

13. [22-21396](#)-A-13 **IN RE: JOSE/MARGARITA VALADEZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
7-7-2022 [[26](#)]

PETER MACALUSO/ATTY. FOR DBT.

Tentative Ruling

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