

**UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Wednesday, August 3, 2022
Department B – 510 19th Street
Bakersfield, California**



At this time, when in-person hearings in Bakersfield will resume is to be determined. No persons are permitted to appear in court for the time being. All appearances of parties and attorneys shall be as instructed below.

Unless otherwise ordered, all hearings before Judge Lastreto are simultaneously: (1) via **ZOOMGOV VIDEO**, (2) via **ZOOMGOV TELEPHONE**, and (3) via **COURTCALL**. You may choose any of these options unless otherwise ordered.

Prior to the hearing, parties appearing via Zoom or CourtCall are encouraged to review the court's [Zoom Policies and Procedures](#) or [CourtCall Appearance Information](#).

Parties in interest and members of the public may connect to the video and audio feeds, free of charge, using the connection information provided:

Video web address: <https://www.zoomgov.com/j/1610577496?pwd=U21SSXZmZzIyTjRZZUpXMTlhqNU5FUT09>
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Please join at least 5 minutes before the start of your hearing and wait with your microphone muted and camera on until your matter is called.

Unauthorized Recording is Prohibited: Any recording of a court proceeding held by video or teleconference, including "screenshots" 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.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called, and all parties will need to appear at the hearing unless otherwise ordered. The court may continue the hearing on the matter, set a briefing schedule, or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

Post-Publication Changes: The court endeavors to publish its rulings as soon as possible. However, calendar preparation is ongoing, and these rulings may be revised or updated at any time prior to 4:00 p.m. the day before the scheduled hearings. Please check at that time for any possible updates.

9:00 AM

1. [20-10915](#)-B-13 **IN RE: ELOY/DELLA RUIZ**
[RSW-3](#)

MOTION TO MODIFY PLAN
6-13-2022 [[46](#)]

DELLA RUIZ/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted or continued.

ORDER: The minutes of the hearing will be the court's findings and conclusions. Order preparation to be determined at the hearing.

Eloy Martinez Ruiz and Della Marie Ruiz (collectively "Debtors") move for an order approving the *Second Modified Chapter 13 Plan* dated June 13, 2022. Doc. #46. The proposed plan provides for 60 months of payments in which Debtors shall pay a total of \$63,942.00 through May 2022, and beginning June 2022, the monthly payment will be \$3,306.00 through the end of the plan. Doc. #50. Per Debtors' *Amended Schedules I and J*, Debtors have \$3,305.37 in monthly net income. Doc. #52.

In contrast to the operative *First Modified Plan* dated June 11, 2021, the proposed plan reduces the term from 84 months to 60 months and increases the monthly payment from \$2,800.00/month to \$3,306.00/month. *Id.*; cf. Docs. #33; #41. Both plans provide for a 0% dividend to allowed, non-priority unsecured claims.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely objected under 11 U.S.C. § 1325(a)(6) because the Debtors will not be able to make all payments under the plan and comply with the plan. Doc. #54. Trustee says that if the plan is approved, there would remain a total of 33 months including July 2022. However, the plan as proposed would take 35.11 months to fund because Additional Provision 7.03 accounts for post-petition mortgage delinquencies, but there was a previous post-petition mortgage delinquency that had not been satisfied at the time of modification. *Id.* As a result, Debtors now owe a total post-petition delinquency, including late fees, of \$7,619.44. Additionally, the plan fails to account for priority claims totaling \$1,342.49, and interest in the amount of \$453.48 due to Class 2 creditors. *Id.* To fund the plan in 33 months, Debtors would need to increase the plan payment to at least \$3,386.00. *Id.*

Debtors replied, agreeing to increase the plan payment to \$3,386.00 in accordance with Trustee's calculations. Doc. #56.

The court notes that Debtors' monthly net income appears to be \$80.63 short of Trustee's proposed increased plan payment. The court will inquire about whether the plan is feasible at the hearing. Since Trustee's objection may be resolvable in the order confirming plan, this matter will be called and proceed as scheduled.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). The failure of the creditors, the U.S. Trustee, or any other party in interest except Trustee to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest except Trustee are entered. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

The court will inquire about plan feasibility at the hearing and whether Trustee's objections can be resolved in the order confirming plan. If granted, the confirmation order shall include the docket control number of the motion, reference the plan by the date it was filed, and be approved as to form by Trustee.

2. [22-10815](#)-B-13 **IN RE: CHRISTOPHER HUGHES**
[MHM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE
MICHAEL H. MEYER
6-17-2022 [[14](#)]

STEVEN ALPERT/ATTY. FOR DBT.
WITHDRAWN

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Withdrawn; removed from calendar.

NO ORDER REQUIRED.

The chapter 13 trustee withdrew this objection to confirmation of the debtor's chapter 13 plan on July 21, 2022. Doc. #38. Accordingly, this objection will be removed from calendar.

3. [21-10537](#)-B-13 **IN RE: MAGDALINO DIMPAS**
[RSW-1](#)

MOTION TO MODIFY PLAN
6-14-2022 [\[38\]](#)

MAGDALINO DIMPAS/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Continued to September 7, 2022 at 9:00 a.m.

ORDER: The court will issue an order.

Magdalino Mata Dimpas ("Debtor") moves for an order confirming the *First Modified Chapter 13 Plan* dated June 14, 2022. Doc. #38. The proposed 60-month plan provides that Debtor shall pay a total of \$17,800.00 through June 2022, and beginning July 2022, Debtor shall pay \$1,500.00/month through the end of the plan. Doc. #42. Debtor's *Amended Schedules I and J* indicate that Debtor's monthly net income is \$1,502.36/month. Doc. #44.

In contrast to the operative *Chapter 13 Plan* dated March 4, 2021, confirmed July 19, 2021, the plan payment has increased from \$1,450.00/month for the first two months and \$1,490.00/month starting month 3, to \$1,500.00/month for the remainder of the plan. Docs. #4; #29. Both plans provide for a 100% dividend to allowed, non-priority unsecured claims.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely objected under 11 U.S.C. § 1325(a)(6) because Debtor will not be able to make all payments under the plan and comply with the plan. Doc. #46. Trustee says that the increased plan payment over the remaining 45 months will take 52.45 months to fund, so Debtor would need to increase the payment to at least \$1,557.00/month to fund during this time period. *Id.*

This motion will be CONTINUED to September 7, 2022 at 9:00 a.m.

Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, the Debtor shall file and serve a written response not later than August 24, 2022. The response shall specifically address each issue raised in the opposition to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the Debtor's position. Trustee shall file and serve a reply, if any, by August 31, 2022.

If the Debtor elects to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be

filed, served, and set for hearing, not later than August 31, 2022. If the Debtor does not timely file a modified plan or a written response, this motion will be denied on the grounds stated in the opposition without a further hearing.

4. [22-10849](#)-B-13 **IN RE: DAMITA NOVEL**
[TJS-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY ALLY BANK
6-22-2022 [[17](#)]

ALLY BANK/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
TIMOTHY SILVERMAN/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained in part; continued in part.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The court will issue an order.

Ally Bank ("Creditor") objects to confirmation of Damita Jo Novel's ("Debtor") *Chapter 13 Plan* dated May 20, 2022. Doc. #17. Creditor objects because: (1) the plan fails to pay the full replacement value of Creditor's collateral, a 2017 Chevrolet Impala LT Sedan 4D ("Vehicle") as required by 11 U.S.C. §§ 1325(a)(5)(B) and 506(b); and (2) the plan fails to pay the applicable prime plus interest rate as required by *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). Doc. #17.

Though not required, Debtor responded. Doc. #24.

The court intends to SUSTAIN IN PART the objection as to failure to pay the replacement value because no motions to value collateral have been filed and CONTINUE the objection to determine the proper "formula" discount rate to pay Creditor's claim at a later evidentiary hearing.

This objection was filed and served pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and sustain the objection. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Federal Rule of Bankruptcy Procedure 3001(f) provides that "[a] proof of claim executed and filed in accordance with these rules shall constitute *prima facie* evidence of the validity and amount of the

claim.” 11 U.S.C. § 502(a) states that a claim or interest, evidenced by a proof of claim under § 501, is deemed allowed unless a party in interest objects. Creditor filed Proof of Claim No. 3-1 on June 8, 2022 in the amount of \$15,294.00 at 9.990% interest. Claim 3. Claim 3 estimates the value of the Vehicle securing it to be \$16,106.00. *Id.* No party has objected to Claim 3.

First, Debtor’s plan proposed to pay Creditor \$12,000.00 at 5.00% interest in Class 2B, which are for claims reduced based on the value of the collateral. Doc. #3. Sections 1.04 and 3.08(c) of the plan require separately served and filed motions to value collateral for claims classified in class 2. Though Debtor says that Vehicle is worth only \$12,000.00 because it has been in two accidents, as of August 1, 2022, no motions to value collateral have been filed.

Second, in *Till*, the Supreme Court determined that the appropriate interest rate for a secured claim should be determined by the ‘formula approach,’ which requires the court to take the national prime interest rate and adjust it to compensate for an increased risk of default. *Till*, 124 U.S. at 471 (2004). Such factors include (1) circumstances of the estate, (2) the nature of the security, and (3) duration and feasibility of the reorganization plan. *Id.*, at 476-77. This “prime-plus” rate is open for determination. *Id.*, at 480 (noting that other courts have generally approved adjustments to the prime rate of 1% to 3%) (citing *GMAC v. Valenti (In re Valenti)*, 105 F.3d 55, 64 (2d Cir. 1997); *Assocs. Commer. Corp. v. Rash*, 520 U.S. 953 (1997)).

As of the May 20, 2022 petition date, the national bank prime interest rate was 4.0%.¹ On June 16, 2022, it rose to 4.75%, and on July 28, 2022, rose again to 5.5%, where it remains now.² Creditor cites to the petition-date 4.0% prime rate and objects to the plan to the extent that it pays less than the prime interest rate plus 2.000%. Since the plan proposes to pay 5.00% interest, Creditor argues that the proposed interest rate is inequitable under the *Till* factors.

Accordingly, this matter will be called and proceed as scheduled. The court intends to SUSTAIN THE OBJECTION IN PART as to the plan failing to pay the full replacement value of the Vehicle because Debtor has not filed a motion to value collateral. The court will set an evidentiary hearing to determine the appropriate interest rate under the plan.

¹ See *Federal Reserve Selected Interest Rates*, Data Download, Series H15/H15/RIFSPBLP_N.D, historical bank prime loan rates (05/01/2022-08/01/2022), <https://www.federalreserve.gov/releases/H15/default.htm> (visited Aug. 1, 2022). The court may take judicial notice *sua sponte* of information published on government websites. Fed. R. Evid. 201(c)(1); *Daniels-Hall v. Nat’l Educ. Ass’n*, 629 F.3d 992, 998-99 (9th Cir. 2010).

² The prime rate was 4.75% on June 22, 2022 when this objection was filed. *Id.*

5. [22-10954](#)-B-13 **IN RE: CHAD GILLIES**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
7-18-2022 [\[13\]](#)

NEIL SCHWARTZ/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Continued to September 7, 2022 at 9:00 a.m.

ORDER: The court will issue an order.

Chapter 13 trustee Michael H. Meyer ("Trustee") objects to confirmation of Chad Mitchell Gillies' ("Debtor") *Chapter 13 Plan* dated June 2, 2022. Doc. #13. Trustee objects because: (1) the plan provides for payments to creditors for a period longer than 5 years (11 U.S.C. § 1322(d)); and (2) the plan fails to comply with other provisions of the Bankruptcy Code (11 U.S.C. § 1325(a)(1)).

First, the plan provides for payment of \$3,426.00/month for 60 months. Doc. #3. From these payments, Trustee is to pay \$15,000 for attorney fees when approved by the court, \$1,617.85/month for the Class 1 ongoing mortgage payment plus \$521.00/month to cure the \$39,982.59 Class 1 pre-petition arrearage. *Id.* Trustee says that this will take 76.74 months to fund, which is more than the 5-year plan limitation of § 1322(d). Doc. #13. This calculation does not account for the application of the waterfall effect of paying secured creditors additional funds monthly after paying the fixed monthly payment in each disbursement cycle. *Id.*

Second, the plan fails to comply with other provisions of the Bankruptcy Code because Debtor failed to file complete and accurate schedules. *Id.* Debtor's counsel did not list in the petition the prior bankruptcy filed June 5, 2020. Additionally, Debtor's *Schedule I* or Form 122C-1 fail to accurately state the number of dependents or family members. Debtor claims on line 16b that there are five members of Debtor's household while *Schedule J* says that Debtor has no dependents. Debtor also does not include an apparent \$12,007.20 bonus that was received sometime between January and March 2022. *Id.*

Lastly, Trustee has not concluded the meeting of creditors because Debtor failed to appear at the meeting scheduled on July 12, 2022. *Id.* A continued meeting is scheduled on August 16, 2022 and Trustee may have further objections based on Debtor's testimony at that meeting. *Id.*

This objection will be CONTINUED to September 7, 2022 at 9:00 a.m.

Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, the Debtor shall file and serve a written response not later than August 24, 2022. The response shall specifically address each issue raised in the opposition to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the Debtor's position. Trustee shall file and serve a reply, if any, by August 31, 2022.

If the Debtor elects to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than August 31, 2022. If the Debtor does not timely file a modified plan or a written response, this objection will be sustained on the grounds stated without a further hearing.

6. [21-12355](#)-B-13 **IN RE: MONICA RAMOS**

ORDER TO SHOW CAUSE
6-9-2022 [\[83\]](#)

ROBERT WILLIAMS/ATTY. FOR DBT.
DEBTOR DISMISSED 06/08/2022. RESPONSIVE PLEADING.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Debtor is barred from refiling any bankruptcy under any chapter in this District for a period of two years without first obtaining written permission from the Chief Bankruptcy Judge of the Eastern District of California.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The court will issue an order.

The court issued this *Order to Show Cause* ("OSC") due to allegations from chapter 13 trustee Michael H. Meyer ("Trustee") of bad faith in filing the petition in his objection to Monica Marcella Ramos' ("Debtor") motion to confirm chapter 13 plan. Doc. #83.

Debtor's attorney, Robert S. Williams, timely responded, stating that Debtor failed to respond to his requests to contact his office to prepare a declaration. Doc. #86.

No other party in interest responded.

This matter will be called and proceed as scheduled. The court will issue an order imposing a two-year bar to refiling without first obtaining written permission from the Chief Bankruptcy Judge of the

Eastern District of California.

The OSC set this motion to dismiss for hearing on 28 days' notice under Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the Debtor, the creditors, the chapter 13 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the OSC. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

On June 8, 2022, the court heard and granted chapter 13 trustee motion to dismiss Debtor's bankruptcy for unreasonable delay and failure to make plan payments. Doc. #79; MHM-2. The order was amended on June 9, 2022 to retain jurisdiction to determine the outcome of the OSC. Doc. #82.

Trustee's motion to dismiss was originally set for hearing on April 6, 2022 and Debtor timely responded, stating that she was unable to become current on plan payments but would file a motion to modify plan to cure the delinquency. Doc. #52. Debtor subsequently filed a modified plan and set it for hearing on May 4, 2022, which prompted continuing Trustee's motion to dismiss to the same date and time. Docs. #60; #62. This hearing was further continued to June 8, 2022 because Trustee objected to confirmation of the modified plan. Docs. #64; #66; #69.

Before the June 8, 2022 hearing, Trustee supplemented his objection to plan confirmation due to the receipt of new information. Doc. #73. On May 10, 2022, Trustee received an email from Mary French, the Vice President and Assistant General Counsel for Mother Lode Holding Company, Placer Title Company ("Placer Title"). Doc. #74. Placer Title's email informed Trustee's office that Debtor, under the name Monica Dominguez, filed a lawsuit in Kern County Superior Court against Placer Title on or about May 24, 2021 – approximately five months before the bankruptcy was filed. Doc. #75, *Ex. A*. The lawsuit is currently pending and alleges breach of fiduciary duty and other damages with respect to real property located at 2201 Verdugo Lane, Bakersfield, CA ("Property"). *Id.*, *Ex. B*. Debtor's lawsuit claims that she paid off the \$200,000 loan owed to Efrain Bobadillo ("Bobadillo") secured by Property, and that Bobadillo and Placer Title have failed to reconvey the deed to Debtor. *Id.*

Although the lawsuit was filed pre-petition, neither the lawsuit nor any claims against Bobadillo, nor any claims against Placer Title were disclosed in the petition. Doc. #1. In contrast, Debtor's *Schedule D* lists Bobadillo as the holder of the first deed of trust encumbering Property, *Schedule J* indicates that Debtor pays \$1,100 per month for a mortgage, and the *Statement of Financial Affairs* says that Debtor was

making monthly payments of \$1,030 in the 90 days prior to filing the petition. *Id.* Additionally, Debtor's confirmed and proposed modified plans, which are premised on Debtor's lack of disposable income, provide for a 0% dividend to unsecured claims and require Debtor to pay Bobadillo \$1,030 per month a class 4 claim. Docs. #3; #58.

Based on Debtor's claims in the lawsuit that the loan secured by the deed of trust has been entirely paid off, Trustee believes that Debtor's representations that she is paying between \$1,030-\$1,100 per month for a mortgage are false, and Debtor actually has been receiving greater monthly net income than disclosed in the schedules. Doc. #74. As a result, Trustee supplemented his objection to Debtor's proposed plan because (i) it failed to provide for submission of all or such portion of Debtor's future income or other earnings to the supervision and control of the trustee as is necessary to execute the plan; and (ii) Debtor failed to prove that the plan was proposed in good faith, or that the petition was not filed in bad faith. Doc. #73. Trustee argued that Debtor had not demonstrated sufficient evidence of good faith because Debtor did not disclose the claims against Placer Title and Bobadillo in the schedules or at the meeting of creditors. Doc. #74. Additionally, Debtor misrepresented her monthly net income by falsely claiming in the schedules and plan that she had been paying between \$1,030 to \$1,100 per month to Bobadillo for her mortgage.

Since Debtor did not respond to Trustee's original objection by the May 25, 2022 deadline, the court denied Debtor's motion to confirm plan on June 8, 2022. As a result of the plan denial, the delinquency owed pursuant to the confirmed plan remained unpaid and outstanding, so the court dismissed the case on June 8, 2022, issued this OSC, and retained jurisdiction over the outcome of the OSC. Docs. #79; ##82-83.

11 U.S.C. § 105(a) allows the court to issue an order, process, or judgment that is necessary or appropriate to carry out the provisions of the Bankruptcy Code. The court is not precluded from, *sua sponte*, taking any action or making any determination necessary or appropriate to enforce or implement orders, rules, or to prevent an abuse of process. § 105(a).

11 U.S.C. § 349(a) affords the court judicial discretion to impose a variety of consequences of dismissal. *In re Duran v. Rojas*, 630 B.R. 797, 809 (B.A.P. 9th Cir. 2021). For "cause," the court may "order otherwise" to impose in a dismissal a prohibition on the discharge of any debt that could have been discharged in the dismissed case or an injunction from filing future bankruptcy petitions. *Ibid.*; § 349(a).

"Cause" has not been defined, but typically § 349(a) requires a showing of egregious conduct. "Generally, only if a debtor engages in egregious behavior that demonstrates bad faith and prejudices creditors . . . will a bankruptcy court forever bar the debtor from seeking to discharge then existing debts." *In re Tomlin*, 105 F.3d 933, 936-37 (4th Cir. 1997).

The test to determine whether there is bad faith is the "totality of the circumstances" test. *Leavitt v. Soto (In re Leavitt)*, (B.A.P. 9th Cir. 1997), citing *In re Eisen*, 14 F.3d 469, 470 (9th Cir. 1994). The court must consider the following four factors:

- (1) whether the debtor misrepresented facts in his petition or plan, unfairly manipulated the Bankruptcy Code, or otherwise filed his Chapter 13 petition or plan in an inequitable manner;
- (2) the debtor's history of filings and dismissals;
- (3) whether the debtor only intended to defeat state court litigation; and
- (4) whether egregious behavior is present.

Duran, 630 B.R. at 810, citing *Leavitt*, 171 F.3d at 1224; see also, *In re Goeb*, 675 F.2d 1386, 1390 (9th Cir. 1982); *In re Chinichian*, 784 F.2d 1440, 1445-46 (9th Cir. 1986). The burden is on the debtor to prove that the petition was filed in good faith. *In re Powers*, 135 B.R. 980, 997 (Bankr. C.D. Cal. 1991).

Based on the record, it appears that Debtor filed this bankruptcy case in bad faith and unfairly manipulated the Bankruptcy Code by misrepresenting her monthly net income and failing to disclose her unliquidated interest in the lawsuit against Placer Title and Bobadillo, if any. Debtor represented that she makes ongoing payments of \$1,030 to \$1,100 per month to Bobadillo in the confirmed and proposed modified plans, schedules, and other statements. Doc. #1; #3; #58. Trustee has produced evidence that Debtor claims, in other state court proceedings, that she paid off the loan secured by Property in full on or before January 13, 2014, and as a result is entitled to a full reconveyance of the deed of trust, statutory damages of \$500 per violation, and \$75,000 in damages with pre- and post-judgment interest accruing from January 13, 2014. Docs. #75, *Ex. B*, at 12, ¶ 7. If the claims in the lawsuit are true, then contrary to all of her pleadings in this bankruptcy, Debtor has not in fact been making ongoing payments of \$1,030 to \$1,100 per month to Bobadillo, and Debtor has greater monthly net income than disclosed.

Debtor's attorney responded to the OSC to say that Debtor failed to respond to his requests to contact his office to prepare her declaration. Doc. #86. Their last contact was on June 10, 2022, and then again, briefly, on July 20, 2022. *Id.* Debtor's attorney will file a declaration from Debtor, if any, as soon as one can be properly prepared. Debtor did not otherwise respond.

Therefore, the court finds that this case was filed in bad faith under the totality of the circumstances test. Debtor engaged in egregious conduct, misrepresented facts in the petition and plan by failing to disclose assets and misrepresenting monthly net income, unfairly manipulated the Bankruptcy Code, and filed the petition and plan in an inequitable manner.

Accordingly, the court will issue an order enjoining Debtor from filing any subsequent petition for relief under any chapter of the Bankruptcy Code in this District for a period of two years without first obtaining written permission from the Chief Bankruptcy Judge of the Eastern District of California.

7. [22-10957](#)-B-13 **IN RE: BRYAN URNER AND JULIE VANDERNOOR URNER**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
7-18-2022 [\[12\]](#)

ROBERT WILLIAMS/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Continued to September 7, 2022 at 9:00 a.m.

ORDER: The court will issue an order.

Chapter 13 trustee Michael H. Meyer ("Trustee") objects to confirmation of Bryan Edward Urner's and Julie Michelle Vandernoor Urner's ("Debtors") *Chapter 13 Plan* dated June 5, 2022. Doc. #12. Trustee objects because: (1) the plan fails to provide for the same treatment of claims classified within a particular class (11 U.S.C. § 1322(a)) and unfairly discriminates between a class or classes of unsecured claims (11 U.S.C. § 1322(b)); (2) the plan fails to provide for the value of property to be distributed under the plan on account of each allowed unsecured claim in at least the amount that would be paid if the estate was liquidated under chapter 7 (11 U.S.C. § 1325(a)(4)); and (3) the plan has not been proposed in good faith (11 U.S.C. § 1325(a)(3)) and/or the petition was filed in bad faith (11 U.S.C. § 1325(a)(7)). *Id.*

The plan provides for payments of \$7,500.00/month for 60 months. Doc. #3. From these payments, Trustee is to pay \$2,400.00 in attorney fees, \$27,611.30 of arrearages on Debtors' real property, post-petition monthly payments of \$1,978.00 on Debtors' residence, and two Class 2 creditors for Debtors' automobiles in the amounts of \$1,575.00 and \$3,165.00/month with 5% interest. *Id.* Additionally, Debtors have approximately \$355,222.07 in unsecured, non-priority claims. This consists of \$210,873.00 in student loan debt for Debtors' daughter, for which Debtors claim to be liable and will pay directly outside of the plan as a long-term debt. The other unsecured debt is non-student loan debt that totals \$163,840.05 and will be paid 100% by the trustee.

Debtors' *Schedule J* indicates that Debtors have \$11,100.00 in monthly net income. Doc. #1, *Sched. J*. From that, Debtors will be paying \$7,500.00/month for the plan payment and have \$3,600.00/month

available to pay the student loan debt. Debtors testified at the 341 meeting that the student loan payment is approximately \$2,000.00/month. Doc. #12. However, Debtors' counsel indicated that after the student loan forbearance ends, no payments will be required on the student loans because of the bankruptcy.

First, Trustee objects because payment of the student loan without payment to other unsecured creditors fails the unfair discrimination test in *Amfac Distrib. Corp. v. Wolff (In re Wolff)*, 22 B.R. 510 (B.A.P. 9th Cir. 1982). *Id.* Payment of 100% of the non-student loan debt while not paying the student loan debt is unfair discrimination. The Bankruptcy Code requires similarly situated creditors to be similarly treated unless cause is found to allow discrimination between classes.

Second, the plan fails the liquidation analysis under § 1325(a)(4). If this case were liquidated under chapter 7 on the date of confirmation, Debtors have non-exempt assets in excess of \$500,000.00. Doc. #12. Unsecured and priority creditors, including the student loan claims, do not exceed \$500,000.00, so Trustee says that the claims must be paid with interest at the Federal Judgment Rate.

Lastly, Trustee raises that the plan has not been proposed in good faith, and/or the petition was filed in bad faith because the plan proposes language to pay student loans directly, yet Debtors testified that no payments are intended to be made because of the bankruptcy.

This objection will be CONTINUED to September 7, 2022 at 9:00 a.m.

Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, the Debtors shall file and serve a written response not later than August 24, 2022. The response shall specifically address each issue raised in the opposition to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the Debtors' position. Trustee shall file and serve a reply, if any, by August 31, 2022.

If the Debtors elect to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than August 31, 2022. If the Debtors do not timely file a modified plan or a written response, this objection will be sustained on the grounds stated without a further hearing.

8. [22-10569](#)-B-7 **IN RE: SUMAIRA RAHMAN**
[JCW-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY MTGLQ
INVESTORS, LP
5-20-2022 [[18](#)]

MTGLQ INVESTORS, LP/MV
JENNIFER WONG/ATTY. FOR MV.
CONVERTED TO CHAPTER 7 ON 7/6/22

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

The court converted this case to chapter 7 on July 6, 2022. Doc. #75.
Accordingly, MTGLQ Investors, LP's objection to confirmation of the
plan will be OVERRULED AS MOOT.

9. [22-10569](#)-B-7 **IN RE: SUMAIRA RAHMAN**
[JCW-1](#)

AMENDED OBJECTION TO CONFIRMATION OF PLAN BY MTGLQ
INVESTORS, LP
6-14-2022 [[58](#)]

MTGLQ INVESTORS, LP/MV
JENNIFER WONG/ATTY. FOR MV.
CONVERTED TO CHAPTER 7 ON 7/6/22

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

The court converted this case to chapter 7 on July 6, 2022. Doc. #75.
Accordingly, MTGLQ Investors, LP's objection to confirmation of the
plan will be OVERRULED AS MOOT.

10. [22-10569](#)-B-7 **IN RE: SUMAIRA RAHMAN**
[MHM-2](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE
MICHAEL H. MEYER
5-25-2022 [[31](#)]

CONVERTED TO CHAPTER 7 ON 7/6/22

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

The court converted this case to chapter 7 on July 6, 2022. Doc. #75.
Accordingly, the chapter 13 trustee's objection to confirmation of the
plan will be OVERRULED AS MOOT.