

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Christopher M. Klein

Bankruptcy Judge

Sacramento, California

**August 10, 2022 at 8:30 a.m.**

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1. [22-20502](#)-C-13 JOHN/SHANNON ALVARADO MOTION TO CONFIRM PLAN  
[MRL](#)-1 Mikalah Liviakis 6-27-22 [[32](#)]

**Tentative Ruling:**

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 43 days' notice was provided. Dkt. 37.

**The Motion to Confirm is denied.**

The debtors filed this Motion seeking to confirm the Chapter 13 Plan (Dkt. 34) filed on June 28, 2022.

The Chapter 13 Trustee, Russell Greer ("Trustee") filed an Opposition (Dkt. 40) on July 14, 2022, opposing confirmation because the Debtors are delinquent with plan payments.

**DISCUSSION**

The debtors are \$3,800 delinquent in plan payments. Declaration, Dkt. 41. Delinquency indicates that the plan is not feasible and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6).

That is reason to deny confirmation. Therefore, the Objection is sustained.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm filed by the debtors, John and Shannon Alvarado, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**August 10, 2022 at 8:30 a.m.**

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**IT IS ORDERED** that the Motion is denied, and the plan is not confirmed.

2. [22-20315](#)-C-13 MARK ENOS  
[PLC](#)-05 Peter Cianchetta

MOTION TO APPROVE LOAN  
MODIFICATION  
7-18-22 [[73](#)]

Thru #4

**Tentative Ruling:**

The Motion has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 23 days' notice was provided. Dkt. 77.

**The Motion to Modify Debt is Granted.**

Debtor, Mark Anthony Enos, filed this Motion seeking authority to modify the loan by Lakeview Loan Servicing, LLC on the real property commonly known as 9572 CastleCave Way, Elk Grove, CA.

The proposed financing is in the principal amount of \$174,745.19, paid at 4.125% interest over a 26 year and 10 month term. Monthly payments are proposed to be \$896.66.

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the Motion is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Modify Debt filed by Mark Anthony Enos having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted. The debtor's counsel shall prepare an appropriate order granting the Motion, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved submit the proposed order to the court.

3. [22-20315](#)-C-13 MARK ENOS  
[PLC](#)-3 Peter Cianchetta

MOTION TO CONFIRM PLAN  
7-1-22 [[56](#)]

**Tentative Ruling:**

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 40 days' notice was provided. Dkt. 60.

**The Motion to Confirm is denied.**

The debtor filed this Motion seeking to confirm the Chapter 13 Plan (Dkt. 59) filed on July 1, 2022.

Ford Motor Credit Company LLC (Creditor) filed an Opposition (Dkt. 61) on July 7, 2022, opposing confirmation on the following grounds:

1. The plan fails to provide for the present value of Creditor's secured claim.

The Chapter 13 Trustee, Russell Greer ("Trustee"), opposes confirmation of the Chapter 13 plan on the basis that:

1. The plan classifies LoanCare LLC as a class 4 creditor even though the creditor's proof of claim sets forth arrears indicating the loan is in default;

2. The Disclosure of Compensation of Attorney for debtor states that judicial lien avoidances and relief from stay actions are not included in the agreed upon fee;

3. The plan fails the liquidation test;

4. The plan is not feasible; and

5. The debtor's motion fails to allege all significant factual matter under 11 U.S.C. § 1325(a)(1)-(9).

**DISCUSSION**

Creditor opposes confirmation on the basis that the plan proposes paying its claim at 4.75 percent interest. Creditor argues that this interest rate is outside the limits authorized by the Supreme Court in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). In *Till*, a plurality of the Court supported the "formula approach" for fixing post-petition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the formula approach. See *In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); see

also *Bank of Montreal v. Official Comm. of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had a preference for the formula approach. See *Cachu*, 321 B.R. at 719 (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)).

The court agrees with the court in *Cachu* that the correct valuation of the interest rate is the prime rate in effect at the commencement of this case plus a risk adjustment. Because the creditor has only identified risk factors common to every bankruptcy case, the court fixes the interest rate as the prime rate in effect at the commencement of the case, 3.5%, plus a 1.25% risk adjustment, for a 4.75% interest rate.

The motion fails to allege factual matter under § 1325(a), which states that "the court shall confirm a plan if-". Without alleging the necessary facts under § 1325(a) the court is unable to confirm the plan. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

The plan at Section 3.02 provides that Creditor's Proof of Claim, and not the plan, determines the amount and classification of a claim.

Notwithstanding whether the plan provides for the prepetition arrearage as Trustee argues, the debtor has not carried his burden to show the plan is adequately funded. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

The debtor has non-exempt assets totaling \$8,780. The plan provides for a zero percent dividend to unsecured claims, which is less than the 100 percent dividend necessary to meet the liquidation test. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(4).

The plan mathematically requires a payment of \$340.97 per month, which is greater than the proposed \$330.00 payment.

The debtor has not demonstrated the plan is feasible because the plan terms require a higher payment than what is proposed. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

Upon review of the record, the court finds the plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Motion is denied, and the plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm filed by the debtor, Mark Anthony Enos, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is denied, and the plan is not confirmed.

4. [22-20315](#)-C-13 MARK ENOS  
[PLC](#)-4 Peter Cianchetta

OBJECTION TO CLAIM OF FRANCHISE  
TAX BOARD, CLAIM NUMBER 8  
7-10-22 [[65](#)]

**Tentative Ruling:**

The Objection has been set on Local Rule 3007-1(b)(2) procedure which requires 30 days' notice. The Proof of Service shows that 40 days' notice was provided. Dkt. 69.

**The Objection to Proof of Claim is sustained, and the claim is disallowed in its entirety.**

Counsel for the debtor filed this Objection arguing that Proof of Claim, No. 8, filed by Franchise Tax Board should be disallowed.

The deadline for filing proofs of claim in this case is April 22, 2022. Notice of Bankruptcy Filing and Deadlines, Dkt. 14. The Proof of Claim subject to this Objection was filed April 22, 2022.

Debtor declares that he had no taxable income in the year 2020 and, therefore; he owes no California income tax.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Claim filed in this case by the Chapter 13 trustee, Russell D. Greer, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection to Proof of Claim Number 8 of Franchise Tax Board is sustained, and the claim is disallowed in its entirety.

5. [22-21319](#)-C-13 ASPEN MARSHALL  
[RDG](#)-1 Anh Nguyen

OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
7-11-22 [[14](#)]

**Tentative Ruling:**

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 30 days' notice was provided. Dkt. 17.

**The Objection to Confirmation of Plan is sustained.**

The Chapter 13 Trustee, Russell Greer ("Trustee"), opposes confirmation of the Chapter 13 plan on the basis that:

1. The plan's payments are insufficient;
2. The plan does not provide for the full amount of creditor Golden 1 Credit Union's claim;
3. The plan does not provide for the full amount of creditor Carmax Auto Fiance's claim;
4. The plan does not provide for the full amount of creditor ESB/Harley Davidson's claim; and
5. Debtor has not amended Schedule J as requested by the Trustee.

**DISCUSSION**

The plan mathematically requires a payment of \$3,450 per month, which is greater than the proposed \$3,000 payment.

The debtor has not demonstrated the plan is feasible because the plan terms require a higher payment than what is proposed. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

The plan at Section 3.02 provides that Creditor's Proof of Claim, *and not the plan*, determines the amount and classification of a claim.

The debtor has not carried his burden to show the plan is adequately funded. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

That is reason to deny confirmation. Therefore, the Objection is sustained.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the

Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, Russell Greer, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection is sustained.



**Tentative Ruling:**

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 47 days' notice was provided. Dkt. 61.

**The Motion to Confirm is granted.**

The debtor filed this Motion seeking to confirm the Chapter 13 Plan (Dkt. 58) filed on June 24, 2022.

Creditor, Wilmington Savings Fund Society, FSB, As Owner Trustee of the Residential Credit Opportunities Trust V-D filed an Opposition (Dkt. 65) on July 12, 2022, opposing confirmation on the following grounds:

1. Debtor cannot afford the proposed plan payments; and,
2. The plan provides for unfair treatment of creditor's claim.

The Chapter 13 Trustee, Russell Greer ("Trustee") filed an Opposition (Dkt. 69) on July 21, 2022, opposing confirmation on the following grounds:

1. The plan is not feasible because it includes a non-standard provision with a balance on hand as of June 8, which is inconsistent with the other distribution provisions at Section 5.02(c).

The debtor responded on August 2, 2022 with the following items:

1. In response to the Trustee's opposition, the debtor strikes the non-standard provision;
2. The plan includes the federal judgement rate since it is a 100% dividend;
3. The debtor represents that as a plumber his business was affected by the pandemic, but he is now building his business back. Therefore, he has amended his schedules I & J with a new higher monthly net income of \$6,400, which demonstrates that the plan is now feasible.

## **DISCUSSION**

The debtor's response appears to address the creditor's and trustee's issues for confirmation.

Upon review of the record, the court finds the plan complies with 11 U.S.C. §§ 1322 and 1325(a). The Motion is granted, and the plan is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm filed by the debtor, Jose Luis Hernandez, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, the debtor's Chapter 13 Plan (Dkt. 58) meets the requirements of 11 U.S.C. §§ 1322 and 1325(a), and the plan is confirmed. Debtor's counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the trustee will submit the proposed order to the court.

**Tentative Ruling:**

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 54 days' notice was provided. Dkt. 34.

**The Motion to Confirm is denied.**

The debtor filed this Motion seeking to confirm the Chapter 13 Plan (Dkt. 29) filed on May 25, 2022.

The Chapter 13 Trustee, Russell Greer ("Trustee") filed an Opposition (Dkt. 39) on July 14, 2022, opposing confirmation on the following grounds:

1. The plan payments are delinquent;
2. The plan does not provide for claim No. 5 filed by Angel Cleveland;
3. The plan provides for payments in connection with Domestic support Obligations, where the Trustee is not aware of a stipulation with the Counties on the treatment of those obligations; and,
4. The debtor and his attorney have failed to file a Statement of Rights and Responsibilities related to the payment of attorney fees.

**DISCUSSION**

The debtor is \$1,230.00 delinquent in plan payments. Declaration, Dkt. 40. Delinquency indicates that the plan is not feasible and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6).

The plan at Section 3.02 provides that Creditor's Proof of Claim, *and not the plan*, determines the amount and classification of a claim.

The debtor has not carried his burden to show the plan is adequately funded. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

The debtor has not supplied sufficient information relating to the payment of the domestic support obligations to assist the Chapter 13 Trustee in determining the correct amount to be paid to the counties.

Upon review of the record, the court finds the plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Motion is denied, and the plan is

not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm filed by the debtor, Henry Burl Reed, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is denied, and the plan is not confirmed.

**Final Ruling:** No appearance at the August 10, 2022 hearing is required.  
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The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 44 days' notice was provided. Dkt. 28.

No opposition has been filed. Therefore, the court enters the defaults of the non-responding parties in interest, finds there are no disputed material factual issues, and determines the matter will be resolved without oral argument. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995); *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006).

**The Motion to Modify Plan is granted.**

The debtor filed this Motion seeking to modify the terms of the confirmed plan pursuant to 11 U.S.C. § 1329.

No opposition to the Motion has been filed.

Upon review of the record, the court finds the plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329. The Motion is granted, and the plan is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Modify Plan filed by the debtor, Andres Martin Espinoza, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, the Modified Chapter 13 Plan (Dkt. 26) meets the requirements of 11 U.S.C. §§ 1322, 1325(a), and 1329, and the plan is confirmed. Counsel for the debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the trustee will submit the proposed order to the court.

9. [21-20094](#)-C-13 MARK PARDO AND KATHLEEN MOTION TO MODIFY PLAN  
[PLC](#)-9 RAPISURA-PARDO 7-1-22 [[94](#)]  
Peter Cianchetta

**Final Ruling:** No appearance at the August 10, 2022 hearing is required.  
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The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 40 days' notice was provided. Dkt. 98.

No opposition has been filed. Therefore, the court enters the defaults of the non-responding parties in interest, finds there are no disputed material factual issues, and determines the matter will be resolved without oral argument. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995); *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006).

**The Motion to Modify Plan is granted.**

The debtors filed this Motion seeking to modify the terms of the confirmed plan pursuant to 11 U.S.C. § 1329.

No opposition to the Motion has been filed.

Upon review of the record, the court finds the plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329. The Motion is granted, and the plan is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Modify Plan filed by the debtors, Mark Angel Anthony Pardo and Kathleen Ortiz Rapisura-Pardo, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, the Modified Chapter 13 Plan (Dkt. 95) meets the requirements of 11 U.S.C. §§ 1322, 1325(a), and 1329, and the plan is confirmed. Counsel for the debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the trustee will submit the proposed order to the court.