

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

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

**DAY: TUESDAY**  
**DATE: AUGUST 30, 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. [22-21207](#)-A-13     **IN RE: MANJIT SINGH**  
[DPC-2](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS  
7-5-2022    [\[20\]](#)

PETER MACALUSO/ATTY. FOR DBT.  
WITHDRAWN BY M.P.

**Final Ruling**

The motion was withdrawn by the moving party on August 8, 2022, ECF No. 33. Accordingly, this matter will be removed from the calendar as moot. No appearances are required.

2. [19-22810](#)-A-13     **IN RE: DENNIS/RANDI-MARIE MITCHELSON**  
[DPC-2](#)

CONTINUED MOTION TO DISMISS CASE  
6-21-2022    [\[113\]](#)

PETER MACALUSO/ATTY. FOR DBT.  
DAVID CUSICK/ATTY. FOR MV.

**Final Ruling**

**Motion:** Dismiss Case

**Notice:** Continued from July 19, 2022

**Disposition:** Withdrawn by moving party

**Order:** Civil minute order

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtors have failed to make all payments due under the confirmed plan. The trustee contends that the plan payments are delinquent in the amount of \$5,585.00.

The debtors filed a timely opposition contending that they had made payments and would be current by the date of the prior hearing.

The hearing on this motion was continued to allow the trustee to supplement the evidentiary record. While the trustee had requested that the case be dismissed, his motion failed to indicate why the motion requested dismissal even though the case was previously converted from chapter 7 and indicated as an asset case by the chapter 7 trustee. In cases which have been previously converted the trustee shall state the factual basis, cite the legal authority, and provide analysis and argument in support of the relief sought in his motion. The trustee was ordered to file his supplemental pleadings not later than August 2, 2022.

The trustee filed supplemental pleadings in this matter on August 11, 2022. See *Status Report*, ECF No. 125. In his report the

trustee indicates that the plan payments have been brought current and that he no longer desires to pursue his motion. The debtor has filed no further pleadings. The court construes the trustee's status report as a request to withdraw the motion under Fed. R. Civ. P. 41.

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

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.

3. [19-21114](#)-A-13     **IN RE: LYNDA STOVALL**  
[PGM-5](#)

MOTION TO REFINANCE  
8-1-2022    [\[111\]](#)

PETER MACALUSO/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### **Final Ruling**

**Motion:** Approve Refinance

**Notice:** LBR 9014-1(f)(1) - written opposition filed by the trustee and creditors

**Disposition:** Continued to September 27, 2022, at 9:00 a.m.

**Order:** Civil minute order

The debtor seeks an order authorizing the refinance of her home mortgages held by HSBC Bank USA, N.A. and The Bank of New York Mellon.

The chapter 13 trustee opposes the motion contending that the evidence submitted in support of the motion is insufficient and incomplete. As such the trustee cannot assess the impact of the proposed refinance on the debtor's chapter 13 plan or the feasibility of the proposed refinance. *See Response*, ECF No. 117. Creditors HSBC Bank USA, N.A. and The Bank of New York Mellon have filed limited oppositions to the motion.

### **TRUSTEE OPPOSITION**

#### Schedules I and J, Estimated Closing Statement

The trustee objects as updated Schedules I and J were not filed with the motion and because the exhibits submitted by the debtor do not include the estimated closing statement for the new proposed financing. The most recently filed Schedules I and J were filed on December 31, 2022, ECF No. 104.

The court considers supplemental Schedules I and J, and the estimated closing statement to be an *integral part of a debtor's prima facie case* in presenting this type of motion. Each of these documents should be filed and served at the *outset of the motion* and not as a reply to opposition. Additionally, the movant should indicate the impact of any motion on the chapter 13 plan and state whether and when a modified plan will be filed.

#### Exhibits

##### Exhibits.

- 2) *Exhibit Index*. Each exhibit document filed shall have an index at the start of the document that lists and identifies by exhibit number/letter each exhibit

individually and shall state the page number at which it is found within the exhibit document.

- 3) *Numbering of Pages.* The exhibit document pages, including the index page, and any separator, cover, or divider sheets, shall be consecutively numbered and shall state the exhibit number/letter on the first page of each exhibit.

LBR 9004-2(d)(2), (3) (emphasis added).

The exhibits filed by the debtor do not include the estimated closing/settlement statement despite a reference to such on the exhibit cover page. See *Exhibits*, ECF No. 114, 1:19. Moreover, the exhibits are not referenced in the index by page number, nor are the exhibit pages numbered as required under LBR 9004-2(d)(2), (3). The purpose of LBR 9004-2(d)(2), (3) is to ensure that the court and all interested parties can efficiently and accurately locate and review appropriate documents in support of a motion. This is particularly important where there are multiple documents submitted as exhibits. In the future, failure to follow local rules may result in denial of the motion or other sanctions. LBR 1001-1(g).

#### **DEBTOR REPLY**

On August 18, 2022, the debtor filed Supplemental Schedules I and J as well as an additional declaration in support of her motion. See Schedules I and J, ECF No. 123. See *Declaration*, ECF No. 124. An estimated closing statement was not submitted with these documents.

#### Further Reply and Exhibits

On August 19, 2022, the debtor filed further exhibits which include an estimated closing statement. See *Exhibits*, ECF No. 126. The trustee has not had an opportunity to review the estimated closing statement and evaluate the impact of the motion on the chapter 13 plan. The court reiterates its position indicated previously in this ruling that the filing of the amended budget schedules, a statement by the debtor regarding his or her intentions regarding the plan, and an estimated closing statement, are integral parts of the debtor's prima facie case for this type of motion. All documents and argument in support of the debtor's motion should be filed at the outset of the motion. The court also notes that the latest exhibits filed suffer from the same filing defects under LBR 9004-2(d)(2), (3) as those previously filed and discussed in this ruling. See *Id.*

The court will continue the motion to allow the trustee to review and evaluate the debtor's evidence including the supplemental Schedules I and J and the exhibits. Were this hearing not continued the court would deny the motion.

#### **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 September 27, 2022, at 9:00 a.m.

IT IS FURTHER ORDERED that no later than September 13, 2022, the debtor shall file and serve all additional evidence in support of her motion on all interested parties;

IT IS FURTHER ORDERED that no later than September 20, 2022, the trustee and interested creditors may file a reply. The trustee shall file and serve a status report indicating his position regarding this motion and an evaluation of any evidence filed by the debtor.

IT IS FURTHER ORDERED that the evidentiary record on this matter will close on September 20, 2022.

4. [19-23616](#)-A-13     **IN RE: MARK BRASHLEY**  
[WW-8](#)

MOTION FOR CONSENT TO ENTER INTO LOAN MODIFICATION AGREEMENT  
7-26-2022     [\[128\]](#)

MARK WOLFF/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**Final Ruling**

**Motion:** Approve Refinance

**Notice:** LBR 9014-1(f)(1) - written opposition filed by the trustee and creditors

**Disposition:** Continued to September 27, 2022, at 9:00 a.m.

**Order:** Civil minute order

The debtor seeks an order authorizing the modification of his mortgage. The motion states that the modification is necessary as payments on the loan have increased and the debtor has difficulty maintaining the payments at the current payment schedule. See *Motion*, ECF No. 128, 2:7-9. The transaction calls for a reduction in principle owed on the loan to Midland Mortgage, and a new second HUD loan which will not require payments until 2052, eliminating the need for payment during the term of the debtor's plan. *Id.*, 2:18-21.

**TRUSTEE OPPOSITION**

The chapter 13 trustee opposes the motion indicating that the evidence submitted in support of the motion is insufficient and incomplete because: updated Schedules I and J were not filed with the motion; the plan payments are delinquent; and it is unclear if the debtor intends to modify the chapter 13 plan. The most recently filed Schedules I and J were filed on October 5, 2021, over 10 months ago. See ECF No. 99.

The court considers supplemental Schedules I and J to be an *integral part of a debtor's prima facie* case for the granting of this type of

motion. The schedules should be filed and served at the *outset of the motion* and not as a response to opposition. Additionally, the debtor should signal his intention regarding the modification of his chapter 13 plan when bringing the motion to modify the loan. The confirmed plan provides for payments to Midland Mortgage in Class 1 which the trustee is bound to pay unless and until the plan is modified.

The court will continue the motion to allow the debtor to augment the evidentiary record, file and serve any additional motions as necessary, and for the trustee to review and evaluate the debtor's evidence. Were this hearing not continued for additional evidence the court would deny the motion.

#### **LIMITED NOTICING AND STANDARDIZED CERTIFICATE OF SERVICE**

As of July 5, 2022, this court adopted Local Bankruptcy Rules 2002-3 (limiting notice for Rule 2002(a)(6) (motions for compensation), Rule 9036-1 (electronic service) and Rule 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.

While its use is not yet mandatory Wolff & Wolff used Form EDC 7-005, in memorializing the service of documents in this motion and filed a Certificate of Service, ECF No. 132. That form was signed "Kathleen Marron" who apparently is a paraprofessional employed by that firm. The Certificate of Service represents a textbook example of the proper use of the new local rules and form Certificate of Service. Section 4 properly lists the documents served. ECF No. 132, p. 2. Section 5 is supported by the Clerk's official list of those parties that have filed a Request for Special Notice. *Id.* at p. 4. Section 6(B)(1) properly attaches the Clerk's Official Matrix of Registered Users of the Court's electronic-filing system. *Id.* at p. 5. Section 6(B)(2) is supported by a properly filtered list of creditors. *Id.* at p. 6. The firm and Ms. Marron are to be commended on their precise and skillful application of the new local rules. The court appreciates counsel's voluntary use of Form EDC 7-005.

#### **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 September 27, 2022, at 9:00 a.m.

IT IS FURTHER ORDERED that no later than September 13, 2022, the debtor shall file and serve all additional evidence in support of her motion on all interested parties;

IT IS FURTHER ORDERED that no later than September 20, 2022, the trustee and interested creditors may file a reply. The trustee

shall file a status report updating his position regarding this motion and an evaluation of any evidence filed by the debtor.

IT IS FURTHER ORDERED that the evidentiary record on this matter will close on September 20, 2022.

5. [19-24217](#)-A-13     **IN RE: BRETT BAILEY**  
[SMJ-6](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF GALE, ANGELO,  
JOHNSON & PATRICK, P.C. FOR SCOTT M. JOHNSON, DEBTORS  
ATTORNEY(S)  
7-25-2022     [\[105\]](#)

SCOTT JOHNSON/ATTY. FOR DBT.  
TRUSTEE NON-OPPOSITION

**Final Ruling**

**Application:** Allowance of Additional Compensation

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

**Disposition:** Approved

**Order:** Civil minute order

**Number of Requests for Additional Compensation:** First

**Additional Compensation Requested:** \$2,000.00

**Additional Cost Reimbursement Requested:** \$0

**COMPENSATION AND EXPENSES**

In this chapter 13 case, Scott M. Johnson, of Gale, Angelo, Johnson & Patrick, P.C., attorney for the debtors, has applied for an allowance of additional compensation. The applicant requests that the court allow additional compensation in the amount of \$2,000.00. The chapter 13 trustee has filed a non-opposition to the motion. See ECF No. 112. In his response the trustee indicates that the plan is funded to cover the additional compensation to the debtor's attorney. The debtor has filed a declaration in support of the additional compensation. See *Declaration*, ECF No. 107.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a trustee, examiner or professional person employed under § 327 or § 1103 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

**SUBSTANTIAL AND UNANTICIPATED POST-CONFIRMATION WORK**

The applicant filed Form EDC 3-096, *Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys*, opting in to the no-look fee approved through plan confirmation. The plan also shows the

attorney opted in pursuant to Local Bankruptcy Rule 2016-1(c). The applicant now seeks additional fees, arguing that the no-look fee is insufficient to fairly compensate the applicant. However, in cases in which the fixed, no-look fee has been approved as part of a confirmed plan, an applicant requesting additional compensation must show that substantial and unanticipated post-confirmation work was necessary. See LBR 2016-1(c).

In this case the applicant: filed and gained approval of two Motions to Modify (SMJ-2 and SMJ-3); filed a Motion to Sell heard on shortened time (SMJ-4 and SMJ-5); and defended against a Motion to Dismiss by the chapter 13 trustee (DPC-2).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis and allow additional compensation of \$2,000.00.

#### **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.

Scott M. Johnson's, application for allowance of additional compensation under LBR 2016-1(c) 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. The court allows the additional compensation in the amount of \$2,000.00. The court authorizes the fees to be paid through the plan by the chapter 13 trustee.

6. [22-20718](#)-A-13     **IN RE: TIMOTHY/EVANGELINA HERNANDEZ**  
[CRG-3](#)

OBJECTION TO CLAIM OF CAVALRY SPV I, LLC, CLAIM NUMBER 1  
7-21-2022     [\[52\]](#)

CARL GUSTAFSON/ATTY. FOR DBT.

#### **Final Ruling**

**Objection:** Claim Objection

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

**Disposition:** Overruled without prejudice

**Order:** Civil minute order

The debtor objects to the claim of Cavalry SPV I, LLC, Claim No. 1.

## INSUFFICIENT NOTICE

(b) Amount of Notice.

- 1) Objections Set on 44 Days' Notice. Unless the objecting party elects to give the notice permitted by LBR 3007-1(b)(2), the objecting party shall file and serve the objection at least forty-four (44) days prior to the hearing date.

LBR 3007-1(b)(1).

The notice of motion, ECF No. 53, provides that opposition, if any, 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. This is the notice required under LBR 3007-1(b)(1). LBR 3007-1(b)(1) also requires 44 days' notice of any objection requiring written opposition.

The objection and supporting documents were served on July 21, 2022. As such, the debtor has provided only 40 days' notice of the objection. See *Certificate of Service*, ECF No. 55. The objection will be overruled without prejudice.

## CIVIL MINUTES ORDER

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

Debtor's Objection to the Claim of Cavalry SPV I, LLC, Claim No. 1. has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the objection is overruled without prejudice.

7. [22-20718](#)-A-13     **IN RE: TIMOTHY/EVANGELINA HERNANDEZ**  
[CRG-4](#)

OBJECTION TO CLAIM OF LVNV FUNDING, LLC, CLAIM NUMBER 3  
7-21-2022     [\[56\]](#)

CARL GUSTAFSON/ATTY. FOR DBT.

## Final Ruling

**Objection:** Claim Objection

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

**Disposition:** Overruled without prejudice

**Order:** Civil minute order

The debtor objects to the claim of LVNV Funding, LLC, Claim No. 3.

## INSUFFICIENT NOTICE

(b) Amount of Notice.

- 2) Objections Set on 44 Days' Notice. Unless the objecting party elects to give the notice permitted by LBR 3007-1(b)(2), the objecting party shall file and serve the objection at least forty-four (44) days prior to the hearing date.

LBR 3007-1(b)(1).

The notice of motion, ECF No. 57, provides that opposition, if any, 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. This is the notice required under LBR 3007-1(b)(1). LBR 3007-1(b)(1) also requires 44 days' notice of any objection requiring written opposition.

The objection and supporting documents were served on July 21, 2022. As such, the debtor has provided only 40 days' notice of the objection. *See Certificate of Service*, ECF No. 59. The objection will be overruled without prejudice.

## CIVIL MINUTES ORDER

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

Debtor's Objection to the Claim of Cavalry SPV I, LLC, Claim No. 1. has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the objection is overruled without prejudice.

8. [21-20121](#)-A-13     **IN RE: TIMOTHY/CLARISSA FRIER**  
[WW-2](#)

MOTION TO MODIFY PLAN  
8-2-2022    [\[59\]](#)

MARK WOLFF/ATTY. FOR DBT.  
RESPONSIVE PLEADING

## Final Ruling

This case was dismissed on August 20, 2022. This matter will be removed from the calendar as moot. No appearances are required.

9. [22-21422](#)-A-13     **IN RE: MARTIN/MONIQUE ARCHULETA**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK  
7-28-2022     [\[18\]](#)

MARK BRIDEN/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 debtors filed a modified plan on June 22, 2022. See *First Amended Chapter 13 Plan*, ECF No. 12, filed June 22, 2022. The trustee's objection to the previously filed plan, ECF No. 3, will be overruled as moot.

### **AMENDED PLAN**

*Trustee's Service of the Plan on Creditors.* The trustee shall serve all creditors and other persons entitled to notice with a copy of the debtor's chapter 13 plan. *However, if the trustee does not receive the debtor's chapter 13 plan by the fourteenth (14<sup>th</sup>) day after the filing of the petition, the debtor shall seek confirmation of the chapter 13 plan by complying with the requirements of LBR 3015-1(d)(1).*

LBR 3015-1(c)(3) (emphasis added).

*Modified Plans Proposed Prior to Confirmation.* 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.

...

LBR 3015-1(d)(1).

The debtors filed the petition on June 6, 2022. On June 22, 2022, the debtors filed and served an amended chapter 13 plan on the trustee and all creditors. See *Amended Chapter 13 Plan*, ECF No. 12, and *Certificate of Service*, ECF No. 13. The chapter 13 trustee was unable to serve the plan as required under LBR 3015-1(c)(3) because the plan was not filed until 16 days after the petition was filed.

Therefore, the debtors are required to file a motion to confirm the amended plan or any further amended plan.

#### **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.

IT IS FURTHER ORDERED that the debtors are required to file a motion to confirm any amended plan pursuant to LBR 3015-1(d) (1).

10. [20-22424](#)-A-13      **IN RE: MOHAMMED TAMIK AND SADRUL NISHA**  
[WW-8](#)

MOTION FOR CONSENT TO ENTER INTO LOAN MODIFICATION AGREEMENT  
7-27-2022    [\[59\]](#)

MARK WOLFF/ATTY. FOR DBT.  
RESPONSIVE PLEADING

#### **Tentative Ruling**

**Motion:** Approval of Mortgage Loan Modification

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

**Disposition:** Granted in part, denied in part

**Order:** Civil minute order

The debtors seek an order approving the modification of their home mortgage. The property is located at 10319 Pedra Do Sol Rey, Elk Grove, California.

The chapter 13 trustee has filed a limited opposition to the motion. See *Opposition*, ECF No. 66. The debtors have timely filed a reply which clarifies the amount of the new mortgage payment of \$1,821.95 per month which includes an escrow account for taxes and insurance. The debtors' reply also clarifies that the worker's compensation amounts proffered in the amended schedules filed in support of the motion are correct. See *Reply*, ECF No. 69.

Absent any further objection from the trustee the court will grant the motion in part and deny it in part as follows.

#### **LOAN MODIFICATION**

The court construes the present motion as requesting two forms of relief. First, the motion requests approval of a loan modification agreement. While the ordinary chapter 13 debtor has some of the rights and powers of a trustee under § 363, such a debtor does not have the trustee's right to obtain credit or incur debt under § 364. See 11 U.S.C. § 1303. *But cf.* 11 U.S.C. § 1304 (providing that a

chapter 13 debtor engaged in business has the rights and powers of a trustee under § 364). The court's local rules address this situation and require court authorization before a chapter 13 debtor obtains credit or incurs new debt. LBR 3015-1(h) (1) (E).

Second, the motion impliedly requests relief under § 362(d) (1) to insulate the secured lender from any claim of liability for "any act to collect, assess, or recover a claim against the debtor." See 11 U.S.C. § 362(a) (6), (d) (1).

The court will grant the motion in part to authorize the debtor and the secured lender to enter into the loan modification agreement subject to the parties' right to reinstatement of the original terms of the loan documents in the event conditions precedent to the loan modification agreement are not satisfied. The court will also grant relief from the stay of § 326(a) to allow the secured lender to negotiate and enter into the loan modification agreement with the debtor. 11 U.S.C. § 362(d) (1).

By granting this motion, the court is not approving the terms or conditions of the loan modification agreement. The motion will be denied in part to the extent that the motion requests approval of the terms and conditions of the loan modification agreement or other declaratory relief.

#### **LIMITED NOTICING AND STANDARDIZED CERTIFICATE OF SERVICE**

As of July 5, 2022, this court adopted Local Bankruptcy Rules 2002-3 (limiting notice for Rule 2002(a) (6) (motions for compensation), Rule 9036-1 (electronic service) and Rule 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.

While its use is not yet mandatory Wolff & Wolff used Form EDC 7-005, in memorializing the service of documents in this motion and filed a Certificate of Service, ECF No. 64. That form was signed "Kathleen Marron" who apparently is a paraprofessional employed by that firm. The Certificate of Service represents a textbook example of the proper use of the new local rules and form Certificate of Service. Section 4 properly lists the documents served. ECF No. 64, p. 2. Section 5 is supported by the Clerk's official list of those parties that have filed a Request for Special Notice. *Id.* at p. 4. Section 6(B) (1) properly attaches the Clerk's Official Matrix of Registered Users of the Court's electronic-filing system. *Id.* at p. 5. Section 6(B) (2) is supported by a properly filtered list of creditors. *Id.* at p. 6. The firm and Ms. Marron are to be commended on their precise and skillful application of the new local rules. The court appreciates counsel's voluntary use of Form EDC 7-005.

## 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 court has reviewed the present motion for approval of a mortgage loan modification agreement between the debtor and the secured creditor named in the motion. 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 motion,

IT IS ORDERED that the motion is granted in part and denied in part. The court authorizes the debtor and the secured creditor to enter into the loan modification agreement subject to the parties' right to reinstatement of the original terms of the loan documents in the event conditions precedent to the loan modification agreement are not satisfied. The court denies the motion to the extent it requests approval of the terms and conditions of the loan modification or any other declaratory relief. To the extent the modification is inconsistent with the confirmed chapter 13 plan, the debtor shall continue to perform the plan as confirmed until it is modified.

IT IS FURTHER ORDERED that the court grants relief from the automatic stay to allow the secured lender to negotiate and enter into the loan modification agreement with the debtor. 11 U.S.C. § 362(d)(1). The automatic stay remains in effect for all acts not described in this order.

11. [22-20426](#)-A-13     **IN RE: JOHN NYSTROM**  
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.  
CUSICK  
4-20-2022    [\[17\]](#)

GABRIEL LIBERMAN/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### Final Ruling

**Matter:** Objection to Confirmation of Chapter 13 Plan

**Notice:** Continued from June 22, 2022

**Disposition:** Overruled

**Order:** Civil minute order

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

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

The trustee's objection to confirmation was continued from June 22, 2022, to coincide with the trustee's objection to the debtors' claim of exemptions. The trustee has since withdrawn his objection to the debtors' exemptions (DPC-2). On August 11, 2022, the trustee filed a Status Report, which states, "the Trustee requests the Court enter an order overruling the Trustee's Objection to Confirmation, or in the alternative allow the Trustee to dismiss his objection." See *Status Report*, ECF No. 56, 1:25-26.

At the trustee's request the court will overrule the objection.

#### **CIVIL MINUTE ORDER**

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

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

The trustee's objection to confirmation of chapter 13 plan has been presented to the court. Having considered the objection 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 objection is overruled. The court confirms the chapter 13 plan, and the debtors shall submit an appropriate order confirming the plan.

12. [22-20426](#)-A-13     **IN RE: JOHN NYSTROM**  
[DPC-2](#)

CONTINUED OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS  
5-13-2022    [\[26\]](#)

GABRIEL LIBERMAN/ATTY. FOR DBT.  
RESPONSIVE PLEADING

#### **Final Ruling**

**Matter:** Objection to Exemptions  
**Notice:** Continued from June 22, 2022  
**Disposition:** Withdrawn by moving party  
**Order:** Civil minute order

Chapter 13 trustee David P. Cusick objected to the debtor(s)' claim of exemptions. The hearing on this matter was continued from June 22, 2022, to allow the debtor to augment the evidentiary record and for the trustee to determine if he wished to proceed with his

objection. On July 5, 2022, the debtor filed a declaration and exhibits. See *Declaration*, ECF No. 51, *Exhibits*, ECF No. 52.

On July 14, 2022, the trustee filed a response which states that after reviewing the additional evidence "[t]he Trustee is satisfied with the evidentiary record and no longer opposes the claim of exemption(s), which was the last impediment to confirmation of the Debtor's Plan." See *Response*, ECF No. 54, 2:1-2.

The court construes the response as the trustee's request to withdraw his objection under Fed. R. Civ. P. 41.

#### **Fed. R. Civ. P. 41**

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 objection. Neither the debtor(s), nor any creditor, has expressed opposition to the withdrawal of the trustee's objection. No unfair prejudice will result from withdrawal of the objection 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 objection is withdrawn.

13. [22-21426](#)-A-13     **IN RE: TAMI TRIHUB**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK  
7-28-2022    [\[15\]](#)

THOMAS MOORE/ATTY. FOR DBT.

### **Tentative Ruling**

**Objection:** Trustee's Objection to Confirmation of Plan

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

**Disposition:** Sustained and confirmation denied

**Order:** Civil minute order

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

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

As a courtesy to the court, the trustee filed a Status Report on August 18, 2022, after examining the debtor at the continued meeting of creditors on August 11, 2022. See *Status Report*, ECF No. 25. The court's ruling is limited to the remaining issues as outlined in the trustee's status report.

### **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 \$3,561.13 as the debtor has tendered no plan payments. An additional payment of \$3,561.13 is due August 25, 2022, and thus \$7,122.26 must be paid by the hearing on this matter. The plan cannot be confirmed if the plan payments are not current.

#### Business Attachment to Schedules I and J

The debtor has failed to support the feasibility of her plan as she has not filed the business attachments to Schedules I and J. The debtor receives business income from two businesses, Circle Insurance and A.T. Construction.

Without the income and expense detail contained in the required attachments the court is 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 will sustain each of the trustee's feasibility objections.

#### **GOOD FAITH**

To determine bad faith a bankruptcy judge must review the "totality of the circumstances." *In re Goeb*, 675 F.2d 1386, 1391 (9th Cir.1982). "A bankruptcy court must inquire whether the debtor has misrepresented facts in his plan, unfairly manipulated the Bankruptcy Code, or otherwise proposed his Chapter 13 plan in an inequitable manner." *Id.*, at 1390.

#### Failure to File Accurate and Complete Schedules

The debtor is required to propose a plan in good faith under 11 U.S.C. § 1325(a)(3). Filing inaccurate schedules and statements and failing to promptly amend documents does not evidence that the plan is proposed in good faith.

The trustee objects to confirmation contending that the following documents contain inaccuracies. Schedules A/B regarding the value of the debtor's real property are inconsistent with the testimony of the debtor at the meeting of creditors. The debtor testified at the meeting of creditors that the value of her residential real property in Schedules A/B is undervalued by as much as \$250,000.00. This is a significant discrepancy and may also impact the liquidation analysis of the plan under 11 U.S.C. § 1325(a)(4), as well as evidence that the plan is not proposed in good faith.

The trustee further objects as the debtor admitted that she failed to list obligations owed by her non filing spouse, which appear to be community obligations.

The court finds that the plan is not proposed in good faith as the debtor has failed to file complete and accurate schedules.

### **IMPROPER CLASSIFICATION OF SECURED CLAIM**

#### Requirements of §§ 1325(a)(5)

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). 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 at least equal to 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) (A), (B), (C).

#### Eastern District Plan

This district's form chapter 13 plan provides that "Class 4 claims mature after the completion of this plan, are not in default, and are not modified by this plan." See Chapter 13 Plan, EDC 3-080.

Conversely, Class 2 claims are defined as follows: "Class 2 includes all secured claims that are modified by this plan, or that have matured or will mature before the plan is completed." *Id.*, Section 3.08.

The court takes judicial notice of the debtor's chapter 13 plan and its contents, as well as the bankruptcy schedules which appear on its docket. Fed. R. Evid. 201(b)(2).

The trustee objects to confirmation contending that the claim of Advanced America, Cash Advance Centers is not properly classified in the plan.

The obligation is provided for in Class 4 of the plan. Thus, the debtor proposes to make payments on the loan directly to the lender. Payments are scheduled in the amount of \$100.00 per month. See Plan, ECF No. 3. The debtor contends the amount owed on the claim, is \$2,500.00. Additionally, the debtor lists the claim in Schedule D indicating the claim is secured by a 2013 Dodge Journey valued at \$5,000.00. See Schedule D, ECF No. 1.

Further complicating the matter is the claim filed on August 18, 2022, by the secured creditor. See *Claim No. 14*. The claim lists a secured amount owed of \$6,186.59 which is significantly higher than the amount projected in the debtor's plan. This impacts the feasibility of the plan under 11 U.S.C. § 1325(a)(6), as the claim will not be paid within the plan term at the debtor's proposed payment and the debtor has provided no evidence regarding the length of the term remaining in this contract.

It is unclear if the claim is properly classified, and it appears from the terms of the proposed plan that the claim as filed will not be paid within the plan term. Absent any proof by the debtor to the contrary that the claim properly belongs in Class 4 of the plan, the court concludes that it is improperly classified and that the plan as proposed is not feasible under 11 U.S.C § 1325(a)(6).

The court will sustain the objection.

#### **CIVIL MINUTE ORDER**

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

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

The 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.

14. [22-21331](#)-A-13     **IN RE: RODNEY/CAROL YIP**  
[BLG-1](#)

MOTION TO CONFIRM PLAN  
7-13-2022    [\[14\]](#)

CHAD JOHNSON/ATTY. FOR DBT.  
RESPONSIVE PLEADING

#### **Final Ruling**

On August 20, 2022, the court granted the debtors' Ex-Parte Motion to Dismiss the Motion to Confirm First Amended Chapter 13 Plan (BLG-1). See *Order*, ECF No. 28. This motion is removed from the calendar as moot. No appearances are required.

15. [22-20635](#)-A-13     **IN RE: MARIA LUPERCIO**  
[CYB-1](#)

CONTINUED MOTION TO CONFIRM PLAN  
6-15-2022    [\[22\]](#)

CANDACE BROOKS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**No Ruling**

16. [22-20635](#)-A-13     **IN RE: MARIA LUPERCIO**  
[CYB-2](#)

OBJECTION TO CLAIM OF WELLS FARGO BANK, N.A., CLAIM NUMBER 3  
7-19-2022    [\[36\]](#)

CANDACE BROOKS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**No Ruling**

17. [22-21239](#)-A-13     **IN RE: MYRNA STICKLING**  
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.  
CUSICK  
6-23-2022    [\[20\]](#)

PETER MACALUSO/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**Final Ruling**

**Objection:** Trustee's Objection to Confirmation of Plan

**Notice:** Continued from July 19, 2022

**Disposition:** Sustained and confirmation denied

**Order:** Civil minute order

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

The issues in this matter having been sufficiently briefed by the debtor and the trustee, the court finds that the matter does not require oral argument. LBR 9014-1(h); *Morrow v. Topping*, 437 F.2d 1155, 1156 (9th Cir. 1971) (approving local rules that authorize

disposition without oral argument). Further, no evidentiary hearing is necessary for resolution of material, factual issues.

The hearing on the trustee's objection to confirmation was continued to allow the debtor to augment the evidentiary record and for the trustee to review the proffered evidence and file a reply.

The sole issue remaining before the court is whether the debtor has proven that the plan is feasible under 11 U.S.C. § 1325(a)(6).

#### **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).

#### Inconsistent Evidence Regarding Debtor's Income

The debtor provided the trustee with consecutive monthly Profit and Loss statements, from July 2021 through, and including, May 2022. The trustee analyzed the statements and determined that the average monthly net income equals approximately \$469.00. See *Objection to Confirmation*, ECF No. 20, 2:23-28. See also, *Declaration of Kristin Koo*, ECF No. 22, 3:3-8.

Conversely, Schedule I, filed at the inception of the case, projects net income from the operation of the debtor's business at \$1,700.00 per month. Schedule I identifies only two sources of income: Social Security and income from the operation of the debtor's tax preparation business. Contributions from third parties are not contemplated in Schedule I. See *Schedule I*, ECF No. 1.

In addition, Form 122C-1, also filed at the inception of the case, shows that the debtor's gross average monthly income from the operation of her business during the six-month period prior to the filing of the case was \$1,355.83. See *Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period*, ECF No. 1. Neither Schedule I nor Form 122C-1 have been amended.

On July 19, 2022, the court ordered as follows:

IT IS FURTHER ORDERED that not later than August 2, 2022, the debtor shall augment the record to address the discrepancy in income between the schedules and the information provided to the trustee through profit and losses.

Order, ECF No. 34.

Debtor's Evidence

The debtor filed further argument on August 2, 2022, ECF No. 37. This is supported by a declaration from the debtor's daughter Mellisa Ann Craven, ECF No. 38. Ms. Craven states that she is willing and able to contribute up to \$900.00 per month if necessary to assist her mother in making the plan payments. No declaration was proffered by the debtor. No analysis regarding the discrepancies in income as the court ordered was provided in either the reply or Ms. Craven's declaration.

The failure to provide analysis regarding the income presents a problem. First, without the requested information the court cannot determine the debtor's income. The debtor has provided no additional evidence regarding the amount of her current income, which might refute the information in the profit and loss statements and Form 122C-1. If the court cannot ascertain the debtor's income, then it cannot determine contribution amounts necessary from the debtor's daughter, or whether even a \$900.00 contribution would be sufficient to fund the plan.

On August 19, 2022, the debtor filed a further declaration. The declaration details information regarding the debtor's income for the 2021 tax year. The declaration provides no information regarding the debtor's income during 2022. *See Declaration*, ECF No. 44.

The court notes that the trustee's analysis of the debtor's profit and loss statements includes the months of January through May 2022.

Without analysis of the debtor's current fiscal circumstances, and the explanation/analysis regarding the discrepancies in the debtor's income previously discussed and ordered, the court is unable to determine that the plan is feasible. As the debtor has failed to meet the burden of proving the feasibility of the proposed plan under 11 U.S.C §1325(a)(6) the court will sustain the trustee's objection.

**CIVIL MINUTE ORDER**

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

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

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

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

18. [18-23042](#)-A-13     **IN RE: RUSSELL/MIA LANG**  
[BJE-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
7-11-2022    [\[36\]](#)

SCOTT HUGHES/ATTY. FOR DBT.  
BRADLEY EPSTEIN/ATTY. FOR MV.  
NEPENTHE ASSOCIATION VS.; DEBTORS DISMISSED: 08/09/2022

#### **Final Ruling**

This case was dismissed on August 9, 2022. This motion is removed from the calendar as moot. No appearances are required.

19. [22-21943](#)-A-13     **IN RE: CHRISTOPHER KEENER**  
[PSB-1](#)

MOTION TO EXTEND AUTOMATIC STAY  
8-16-2022    [\[13\]](#)

PAULDEEP BAINS/ATTY. FOR DBT.

#### **Tentative Ruling**

**Motion:** Extend the Automatic Stay

**Notice:** LBR 9014-1(f)(2); no written opposition required

**Disposition:** Granted

**Order:** Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The debtor seeks an order extension the automatic stay under 11 U.S.C. § 362(c)(3).

#### **EXTENSION OF THE STAY**

Upon request of a party in interest, the court may extend the automatic stay where the debtor has had one previous bankruptcy case that was pending within the 1-year period prior to the filing of the

current bankruptcy case but was dismissed. See 11 U.S.C. § 362(c)(3)(B). Procedurally, the automatic stay may be extended only "after notice and a hearing *completed* before the expiration of the 30-day period" after the filing of the petition in the later case. *Id.* (emphasis added). To extend the stay, the court must find that the filing of the *later case* is in good faith as to the creditors to be stayed, and the extension of the stay may be made subject to conditions or limitations the court may impose. *Id.*

The debtor states that the reason he dismissed his prior case was primarily due to the following three factors: loss of rental income; loss of employment as a postal worker; and temporary illness. See *Declaration*, ECF No. 15, 1:26-28. The debtor also indicates that he has accepted a new job with the U.S. Census Bureau beginning September 1, 2022, has resolved his health concerns, and has begun receiving rental income again. *Id.*, 2:1-4. All schedules in support of the plan have been filed, and the motion and supporting documents have all been timely filed.

For the reasons stated in the motion and supporting papers, the court finds that the filing of the current case is in good faith as to the creditors to be stayed. The motion will be granted.

#### **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.

A motion to extend the automatic stay has been presented to the court in this case. Having considered the motion, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is granted, and the automatic stay of § 362(a) is extended in this case. The automatic stay shall remain in effect to the extent provided by the Bankruptcy Code.

20. [20-20646](#)-A-13      **IN RE: DAVID/JANET PICKREL**  
[WW-2](#)

MOTION TO SELL  
8-9-2022    [\[21\]](#)

MARK WOLFF/ATTY. FOR DBT.

**No Ruling**

21. [22-20846](#)-A-13     **IN RE: DANA HERNANDEZ**  
[DPC-2](#)

CONTINUED MOTION TO DISMISS CASE  
6-29-2022    [\[42\]](#)

NOEL KNIGHT/ATTY. FOR DBT.  
DEBTOR DISMISSED: 07/26/2022

### **Final Ruling**

This case was dismissed on July 26, 2022. This motion is removed from the calendar as moot. No appearances are required.

22. [19-20747](#)-A-13     **IN RE: DANIEL/TERESA STALTER**  
[CK-7](#)

MOTION TO MODIFY PLAN  
7-21-2022    [\[149\]](#)

CATHERINE KING/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### **Final Ruling**

**Motion:** Modify Chapter 13 Plan

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

**Disposition:** Granted

**Order:** Prepared by movant, approved by the trustee

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).

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

## **TRUSTEE OBJECTION**

The trustee opposes confirmation of the plan because: 1) the debtors filed Schedules I and J on July 21, 2022, which were labeled as "Amended" when the trustee properly believes the schedules are "Supplemental"; and 2) because he believes the declaration in support of the motion to confirm is factually deficient. Both issues are procedural in nature and the objection is raised under 11 U.S.C. § 1325(a)(1).

## **DEBTOR REPLY**

On August 12, 2022, the debtors filed a response which explained in general terms the reasons for the deficiencies in pleading alleged by the trustee. See *Response*, ECF No. 161.

Also filed on August 12, 2022, were correctly filed Supplemental Schedules I and J, ECF No. 159 and the debtors' declaration, ECF No. 160. The content of the schedules appears to be the same as the schedules filed on July 21, 2022. The trustee raised no substantive opposition to the schedules as previously filed.

The debtors filed a further declaration in support of the motion to modify, ECF No. 160. The modified plan in this case was in response to the trustee's motion to dismiss and changes to the plan primarily center around the mathematical calculation and plan payment required to complete the plan with a 100% distribution to allowed unsecured claims. The declaration of the debtors alleges their familiarity with previous payments tendered through their plan, and by the chapter 13 trustee, as well as the amounts required to be paid going forward.

The court finds that under these circumstances the debtors have met their burden of proof regarding the modification of the plan.

The court will grant the motion to modify. The debtors shall prepare an appropriate order for approval by the trustee and submit the order to the court.

23. [22-20948](#)-A-13     **IN RE: SAMER AYOUB**  
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.  
CUSICK  
5-26-2022    [\[15\]](#)

MARY TERRANELLA/ATTY. FOR DBT.  
DEBTOR DISMISSED: 06/30/2022

### **Final Ruling**

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

24. [22-21558](#)-A-13     **IN RE: MARK/DEBRA KOBOLD**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK  
8-3-2022    [\[20\]](#)

CARL GUSTAFSON/ATTY. FOR DBT.

### **Tentative Ruling**

**Objection:** Trustee's Objection to Confirmation of Plan

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

**Disposition:** Sustained in part, overruled in part, and confirmation denied

**Order:** Civil minute order

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

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

### **PLAN FEASIBILITY**

The proposed plan must be feasible. 11 U.S.C. § 1325(a)(6). Feasibility is a "factual determination" as to the plan's "reasonable likelihood of success." *First Nat'l Bank of Boston v. Fantasia (In re Fantasia)*, 211 B.R. 420, 423 (B.A.P. 1st Cir. 1997). The bankruptcy court needs to "be satisfied that the debtor has the

present as well as the future financial capacity to comply with the terms of the plan." *Id.* As one court summarized feasibility, "Thus, a plan is not feasible and is not confirmable if a debtor's income will not support the plan's proposed payments. *In re Barnes*, 275 B.R. 889, 894 (Bankr. E.D. Cal.2002) ("[T]he debtors showed no disposable income with which to fund a plan.... [T]he debtors have been unable to actually pay the amount projected ... to the trustee."); *In re Bernardes*, 267 B.R. 690, 695 (Bankr. D.N.J. 2001) ("While the feasibility requirement is not rigorous ... the plan proponent must, at minimum, demonstrate that the Debtor's income exceeds expenses by an amount sufficient to make the payments proposed by the plan."); *In re Wilkinson*, 99 B.R. 366, 369 (Bankr. N.D. Ohio 1989) ("[D]ebtors will not be able to comply with the plan and make all payments thereunder."). *In re Buccolo*, 397 B.R. 527, 530 (Bankr. D.N.J. 2008), *aff'd*, 2009 WL 2132435 (D.N.J. July 13, 2009).

#### Failure To Provide Financial/Business Documents

The debtors have failed to provide the trustee with required or requested documents. See 11 U.S.C. § 521(a)(3)-(4).

The trustee requested that the debtor provide him with documents which are required under § 521 of the Bankruptcy Code or with additional documents which the trustee required to properly prepare for the 341 meeting of creditors.

The debtors failed to produce the following documents: completed business questionnaire; 6 months of statements for all bank accounts; proof of license and insurance or written statements that no such documentation exists.

The failure to provide this information makes it impossible for the chapter 13 trustee to accurately assess the debtors' ability to perform the proposed plan. As such, the trustee cannot represent that the plan, in his estimation is feasible, under 11 U.S.C. § 1325(a)(6).

The court will sustain the trustee's 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 is uncertain if the Debtors have filed all applicable tax returns for the four years prior to filing. The debtors have provided the trustee with copies of 2020 and 2021 tax returns, however the claim as amended by the Internal Revenue Service indicates that returns have not yet been filed. See Claim No. 2.

If the debtors have not filed 2020 and 2021 tax returns, and were required to do so, then the plan may not be confirmed as this contravenes the provisions of 11 U.S.C. §§ 1325(a)(9) and 1308. Absent evidence from the debtors stating whether they have filed tax returns the court will sustain the trustee's objection.

#### **ATTORNEY FEES**

The trustee raised the issue of plan feasibility regarding attorney fees as provided for in the proposed plan. The trustee has failed to present any legal argument in opposition to the proposed payment of attorney fees. The provisions appear consistent with the status of current caselaw. The objection, to the extent any is asserted, is overruled.

#### **11 U.S.C. § 1325(b)**

Projected disposable income is a defined term. Projected disposable income is calculated in a two-step process. *Lanning v. Hamilton*, 560 U.S. 505 (2010). Initially, "disposable income" is calculated by means of a rigid statutory formula. Disposable income is current monthly income less amounts reasonably necessary to be expended, which are determined under § 707(b)(2)(A) and (B). 11 U.S.C. § 1325(b)(2). After deducting amounts reasonably necessary to be expended under the means test, the remainder is presumptively the debtor's projected disposable income. See *Hamilton v. Lanning (In re Lanning)*, 545 F.3d 1269 (10th Cir. 2008), *aff'd*, 560 U.S. 505 (2010). Debtors, creditors, or the chapter 13 trustee have the opportunity to rebut the presumption and demonstrate that the projected disposable income is actually higher or lower than the amount derived under the disposable income calculus of § 1325(b). *Lanning*, 560 U.S. at 513-19, 524. The burden of proof is on the party attempting to rebut the presumption. *Lanning*, 545 F.3d at 1278-79.

The debtor has provided evidence of a change in circumstances under *Lanning*. The trustee objects because even allowing for the changes to income which the debtor has claimed the proposed plan still fails to satisfy the requirements of 11 U.S.C. § 1325(b). The court makes no findings regarding whether the debtor has sufficiently rebutted the presumption and demonstrated that the debtor's income is lower than the amount calculated under 11 U.S.C. § 1325(b)(2), as the trustee has presented no argument regarding this issue.

The proposed plan provides a 12% dividend to allowed unsecured claims. See *Plan*, Section 3.14, ECF No. 5. The trustee objects to confirmation because according to his calculations including the allowance of a deduction under *Lanning* in the amount of \$2,779.95, still requires a distribution of at least 13.5% to unsecured claims through the chapter 13 plan.

The court will sustain the objection.

#### **CIVIL MINUTE ORDER**

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

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

The 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 in part and overruled in part. The court denies confirmation of the chapter 13 plan.

25. [22-21365](#)-A-13     **IN RE: RAFAEL/VIANA LARA**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK  
7-27-2022    [\[33\]](#)

KIM BEATON/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

The chapter 13 trustee objects to confirmation of the debtors' plan.

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. See *First Amended Chapter 13 Plan*, ECF No. 42.

## **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.

26. [22-21365](#)-A-13     **IN RE: RAFAEL/VIANA LARA**  
[KMB-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY BOSCO CREDIT, LLC  
7-21-2022    [\[30\]](#)

KIM BEATON/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

Bosco Credit, LLC objects to confirmation of the debtors' plan.

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. *See First Amended Chapter 13 Plan*, ECF No. 42.

## **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.

27. [22-21365](#)-A-13     **IN RE: RAFAEL/VIANA LARA**  
[KMM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY FIFTH THIRD BANK, N.A.  
7-19-2022    [\[26\]](#)

KIM BEATON/ATTY. FOR DBT.  
KIRSTEN MARTINEZ/ATTY. FOR MV.

**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

Fifth Third Bank, N.A. objects to confirmation of the debtors' plan.

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. See *First Amended Chapter 13 Plan*, ECF No. 42.

**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.

28. [22-21468](#)-A-13     **IN RE: SANDRA PEREIRA**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK  
7-27-2022    [\[15\]](#)

MIKALAH LIVIAKIS/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:** Withdrawn  
**Order:** Civil minute order

Chapter 13 trustee David P. Cusick interposed an objection to the debtor(s)' Chapter 13 plan. LBR 3015-1(c)(4). The chapter 13

trustee contended that the debtor had failed to provide proof of her social security number as required under Fed. R. Bankr. P. 4002.

The debtor(s) has not responded to the trustee's objection. On August 11, 2022, the trustee conducted a continued meeting of creditors.

#### **Fed. R. Civ. P. 41**

On August 17, 2022, the trustee indicated that the debtor provided the social security information at the continued meeting of creditors and that the trustee no longer objects to the proposed plan. See ECF No. 19. The court construes this as the trustee's request to withdraw his objection.

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 objection. Neither the debtor(s), nor any creditor, has expressed opposition to the withdrawal of the trustee's objection. No unfair prejudice will result from withdrawal of the objection 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 objection is withdrawn.

29. [22-21072](#)-A-13     **IN RE: TOM/EVERLYN NELSON**  
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK  
6-14-2022    [\[38\]](#)

RICHARD KWUN/ATTY. FOR DBT.

**No Ruling**

30. [21-20073](#)-A-13     **IN RE: EDGARDO/LETICIA PADOAN**  
[DPR-2](#)

MOTION TO MODIFY PLAN  
7-14-2022    [\[40\]](#)

DAVID RITZINGER/ATTY. FOR DBT.  
DEBTORS DISMISSED: 07/21/2022

**Final Ruling**

This case was dismissed on July 21, 2022. This motion is removed from the calendar as moot. No appearances are required.

31. [22-21677](#)-A-13     **IN RE: GREGORY BUSH**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
8-10-2022    [\[32\]](#)

ARETE KOSTOPOULOS/ATTY. FOR DBT.

**Tentative Ruling**

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

32. [22-21078](#)-A-13     **IN RE: JOSE CARDONA AND VANESSA PADILLA**  
[PSB-2](#)

MOTION TO CONFIRM PLAN  
7-19-2022    [\[23\]](#)

PAULDEEP BAINS/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).

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

#### **PLAN 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 \$983.00 with another scheduled payment of \$983.00 due on August 25, 2022. The plan cannot be confirmed if the plan payments are not current.

#### **LAKEVIEW LOAN SERVICING MISCLASSIFIED IN PLAN**

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

The Chapter 13 trustee objects to confirmation, contending that since the debtor was delinquent on her residential home mortgage payment to Lakeview Loan Servicing on the date of the petition that her classification of that claim in Class 4 (direct payment) is improper. Lakeview Loan Servicing has filed a claim. See Claim No. 11. The claim provides for mortgage arrearages in the amount of \$28,184.12 when the petition was filed, *id.* See also *First Amended Chapter 13 Plan*, ECF No. 25.

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 \$28,184.12. Compare Claim No. 11 (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.

#### **LIMITED NOTICING AND STANDARDIZED CERTIFICATE OF SERVICE**

As of July 5, 2022, this court adopted Local Bankruptcy Rules 2002-3 (limiting notice for Rule 2002(a)(6) (motions for compensation), Rule 9036-1 (electronic service) and Rule 7005-1 (requiring attorneys and trustees to use a standardized Certificate of Service, EDC 7-005).

While its use is not yet mandatory Pauldeep Bains, attorney for the movant, used the standardized Certificate of Service, EDC 7-005 in memorializing the service of documents in this motion. 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. The court appreciates counsel's voluntary and largely proper use of the new form.

With three exceptions the Certificate of Service, ECF No. 29, complies with applicable local rules. First, Section 5 of the Certificate is not completed. The movant has not indicated which parties were served. *Id.*, p. 3. Future Certificates of Service should check the boxes indicating which parties are intended to be served as this assists the court in determining if the proper parties are listed in the required Attachments. Second, the movant has checked the incorrect box in Section 6. The movant checked Section 6B, Item 3. This is incorrect as the movant should have

selected Section 6B, Item 2 and checked the box indicating that the Clerk's Matrix was attached as Attachment 6B2.

In this case the omission is not fatal. The movant has attached the Court's Matrix dated July 19, 2022, and the matrix does not indicate that any parties were omitted from service. Moreover, the movant has typed on the form "\*Means of Delivery = United States Mail, postage prepaid." As such the court infers that all parties on the matrix were served properly via U.S. Mail. While this statement has aided the moving party in this specific instance future Certificates of Service should not alter Form EDC 7-005 by adding or deleting text. Information may only be added to the form by filling out the form as indicated in the appropriate spaces and by affixing appropriate attachments as indicated in the instructions contained within the form. Adding text to the body of the form contravenes LBR 7005-1.

### **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.

33. [22-21388](#)-A-13     **IN RE: KATHY ADAMS-BERRY**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK  
7-28-2022    [[19](#)]

PETER CIANCHETTA/ATTY. FOR DBT.

### **Tentative Ruling**

**Objection:** Trustee's Objection to Confirmation of Plan

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

**Disposition:** Sustained and confirmation denied

**Order:** Civil minute order

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

schedule. Absent such opposition, the court will adopt this tentative ruling.

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

## **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).

### Claimed Exemptions

The trustee objects to numerous exemptions claimed by the debtor under C.C.P. § 704.070. The trustee has filed an objection to the debtor's claim of exemptions. Should the trustee's objection be sustained it is unclear whether the plan satisfies the liquidation test of 11 U.S.C. § 1325(a)(4). As it is the debtor's burden to prove the plan satisfies this test the court will sustain the objection.

### Incomplete Information Regarding Transfer of Property

The debtor transferred ownership of a 2018 Mazda CX3 vehicle to her daughter as a gift. See *Statement of Financial Affairs*, ECF No. 11, Page 38. The debtor admitted at the meeting of creditors that she transferred the vehicle as a mode of transportation for her daughter to go to medical school. The debtor has not provided the value of the vehicle as required. As the transfer may be voidable the trustee requires this information to include in his liquidation calculation. As the debtor has failed to provide this information it is unclear if the plan satisfies the liquidation test of 11 U.S.C. § 1325(a)(4). As it is the debtor's burden to prove the plan satisfies this test the court will sustain the objection.

## **PLAN FEASIBILITY**

The proposed plan must be feasible. 11 U.S.C. § 1325(a)(6). Feasibility is a "factual determination" as to the plan's

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

#### Failure To Provide Financial/Business Documents

The debtor has failed to provide the trustee with required or requested documents. See 11 U.S.C. § 521(a)(3)-(4).

The trustee requested that the debtor provide him with documents which are required under § 521 of the Bankruptcy Code and with additional documents which the trustee required to properly prepare for the 341 meeting of creditors. The debtor(s) failed to produce the following documents: 2019 and 2021 individual tax returns; copies of all bank statements, both individually and for the debtor's corporation.

The failure to provide income information makes it impossible for the chapter 13 trustee to accurately assess the debtor's ability to perform the proposed plan. As such, the trustee cannot represent that the plan, in his estimation is feasible, under 11 U.S.C. § 1325(a)(6).

The court will sustain the trustee's objection.

#### **GOOD FAITH**

To determine bad faith a bankruptcy judge must review the "totality of the circumstances." *In re Goeb*, 675 F.2d 1386, 1391 (9th Cir.1982). "A bankruptcy court must inquire whether the debtor has misrepresented facts in his plan, unfairly manipulated the Bankruptcy Code, or otherwise proposed his Chapter 13 plan in an inequitable manner." *Id.*, at 1390.

#### Unclear Intention Regarding Treatment of Mortgage

The debtor is required to propose a plan in good faith under 11 U.S.C. § 1325(a)(3). Filing inaccurate schedules and statements and

failing to promptly amend documents does not evidence that the plan is proposed in good faith.

The trustee objects to confirmation contending that the proposed plan does not comply with the terms of a stipulation between the debtor and secured creditor, Deutsche Bank National Trust Company.

On July 14, 2022, the debtor and creditor filed a Stipulation regarding the treatment of the secured creditor's claim. See *Stipulation*, ECF No. 16. The court declined to sign the proposed order because the chapter 13 trustee was not a party to the stipulation. The court sustains this objection to confirmation.

#### **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. [22-21488](#)-A-13     **IN RE: CECILIA SMITH**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK  
7-27-2022    [\[25\]](#)

PETER MACALUSO/ATTY. FOR DBT.

#### **Tentative Ruling**

**Objection:** Trustee's Objection to Confirmation of Plan

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

**Disposition:** Sustained in part; overruled in part and confirmation denied

**Order:** Civil minute order

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

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

#### **PLAN FEASIBILITY**

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

#### Plan Delinquency

The trustee indicates that the plan payments are delinquent in the amount of \$1,900.00. The plan cannot be confirmed if the plan payments are not current. The court will sustain this objection.

#### **CLASSIFICATION OF MORTGAGE CREDITOR**

The trustee objects to confirmation contending that the debtor's classification of the claim of Guild Mortgage Company, LLC may be incorrect. The debtor has provided for the Guild Mortgage claim in Class 1, but her testimony at the meeting of creditors conflicted with this classification.

Since the trustee filed his objection Guild Mortgage has filed a claim, Claim No. 6. The claim lists mortgage arrears in the amount of \$2,802.78. The proposed plan classifies the Claim in Class 1 with an arrears amount of \$9,000.00. See *Plan*, Section 3.07, ECF No. 3. Given the filing of the claim, the classification of the obligation in Class 1 of the plan is correct.

### Trustee Will Pay the Claimed Amount

If the amount specified in the plan is incorrect, the Class 1 creditor may demand the correct amount in its proof of claim. Unless and until an objection to such proof of claim is sustained, the trustee shall pay the payment amount demanded in the proof of claim.

Eastern District Plan, EDC 3-080, Section 3.07(b) (1) (A).

Because the arrearage amount claimed is less than the amount indicated in the plan, and because the trustee will pay the amount of the claim, the arrearage as stated in the plan by the debtor poses no threat to the feasibility of the proposed plan. The claim of Guild Mortgage is properly provided for in Class 1 of the plan. The court will overrule this portion of the trustee's objection to confirmation.

### **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 in part and overruled in part. The court denies confirmation of the chapter 13 plan.

35. [22-21690](#)-A-13      **IN RE: TRACI HAMILTON**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
8-11-2022    [[29](#)]

RICHARD JARE/ATTY. FOR DBT.

### **Tentative Ruling**

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

36. [17-20993](#)-A-13     **IN RE: EVAN/CELESTE NEISER**  
[MRL-5](#)

CONTINUED MOTION FOR COMPENSATION FOR MIKALAH R. LIVIAKIS,  
DEBTORS ATTORNEY(S)  
5-27-2022    [\[92\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**No Ruling**

37. [22-21495](#)-A-13     **IN RE: BARRY/CINDY TAYLOR**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK  
8-3-2022    [\[17\]](#)

GARY FRALEY/ATTY. FOR DBT.

**Tentative Ruling**

**Objection:** Trustee's Objection to Confirmation of Plan

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

**Disposition:** Sustained and confirmation denied

**Order:** Civil minute order

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

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

**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 chapter 13 trustee objects to confirmation of the plan contending that the debtors testified at the meeting of creditors that they have failed to file all tax returns due for the 4-year period prior to the filing of the bankruptcy case. The evidence submitted by the trustee fails to indicate the years of the missing tax returns.

The court notes that the claims filed by the Internal Revenue Service, Claim No. 1, and the Franchise Tax Board, Claim No. 3, support the trustee's contention. The attachment to Claim No. 1 indicates that federal tax returns have not been filed from 2016-2021. The attachment to Claim No. 3 shows that California state tax returns have not been filed by one or more of the parties for the following years: 2016; 2018-2021.

If the debtors have not filed 2018-2021 tax returns, and were required to do so, then the plan may not be confirmed as this contravenes the provisions of 11 U.S.C. §§ 1325(a)(9) and 1308.

#### **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.

38. [21-22096](#)-A-13     **IN RE: KANI JAHNKE**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK  
8-3-2022    [\[59\]](#)

DAVID FOYIL/ATTY. FOR DBT.  
DAVID CUSICK/ATTY. FOR MV.

### **Tentative Ruling**

**Objection:** Trustee's Objection to Confirmation of Plan

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

**Disposition:** Sustained and confirmation denied

**Order:** Civil minute order

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

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

### **MEETING OF CREDITORS**

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

11 U.S.C. § 343.

The meeting of creditors was continued as debtor's counsel was unable to attend the meeting of creditors and requested a continued hearing. The continued hearing date is August 18, 2022.

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

### Continued Meeting

The court's docket shows that the trustee conducted an examination of the debtor at the continued meeting of creditors on August 18,

2022. The meeting has been concluded. It is unclear if the trustee has any further objections to confirmation as a result of information he may have gleaned at the meeting. As the trustee has not attempted to withdraw his objection or filed a status report, the court will sustain the objection.

#### **CIVIL MINUTE ORDER**

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

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

The 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.

39. [22-21299](#)-A-13     **IN RE: DAMON TURNER**  
[MJD-5](#)

MOTION TO CONFIRM PLAN  
7-22-2022    [\[58\]](#)

MATTHEW DECAMINADA/ATTY. FOR DBT.  
RESPONSIVE PLEADING

#### **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, filed July 22, 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).

The debtor seeks confirmation of his First Amended Chapter 13 Plan, ECF No. 60. On July 22, 2022, the debtor filed Schedules I and J in

support of his plan, ECF No. 64. The chapter 13 trustee has filed a non-opposition to the plan, ECF No. 69.

#### **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.

#### **LIMITED NOTICING AND STANDARDIZED CERTIFICATE OF SERVICE**

As of July 5, 2022, this court adopted Local Bankruptcy Rules 2002-3 (limiting notice for Rule 2002(a)(6) (motions for compensation), Rule 9036-1 (electronic service) and Rule 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.

In support of this motion, attorney Matthew Decaminada filed a Certificate of Service, ECF No. 63. The Certificate of Service represents a textbook example of the proper use of the new local rules and form Certificate of Service. Sections 3, 4 and 5 are properly completed. Section 6(B)(1) properly attaches the Clerk's Official Matrix of Registered Users of the Court's electronic-filing system. *Id.* at p. 4. Section 6(B)(2) is supported the Clerk's Matrix of Creditors, dated July 22, 2022. Counsel is to be commended on his precise and skillful application of the new local rules.