

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

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

DAY: TUESDAY
DATE: SEPTEMBER 13, 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. [20-22701](#)-A-13 **IN RE: EVAN PASTERNAK AND SONJA DURAN**
[CYB-4](#)

MOTION TO MODIFY PLAN
7-29-2022 [\[71\]](#)

CANDACE BROOKS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative 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: Civil minute order

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

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

PLAN FEASIBILITY

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

Schedules I and J

The debtors have not supported the plan by filing recently amended Schedules I and J. The debtors filed and served exhibits in support of the motion which contain Supplemental Schedules I and J, but the schedules must be separately filed so that they can be efficiently and accurately located on the court's docket for current and future reference by the court and all interested parties. Without current income and expense information the court and the chapter 13 trustee are unable to determine whether the plan is feasible or whether the plan has been proposed in good faith. See 11 U.S.C. § 1325(a)(3), (6).

Plan is not Mathematically Feasible

The plan is not feasible as required by § 1325(a)(6) of the Bankruptcy Code. See 11 U.S.C. § 1325(a)(6). The plan requires the trustee to pay amounts exceeding the monthly plan payment made to the trustee.

The proposed plan calls for payments of \$515.00 per month. See *Plan*, Section 2.01, ECF No. 73. The plan also provides for monthly payment of administrative expenses of \$600.00. *Id.*, Section 3.06. Although the plan funds overall, given the court's allowance of the additional attorney compensation in this case the plan is not feasible on a monthly basis.

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.

The trustee objects to the debtor's new reduction in income by contributing for the first time to a voluntary 401(k) plan in the amount of \$212.52 per month. The debtors' proposed plan reduces the percentage payable to unsecured creditors from 75% in the prior confirmed plan to 26%. The debtors have stated in their declaration that they need to reduce plan payments as they have had a baby and now must pay all the expenses associated with a newborn child including daycare. Yet the declaration does not explain the necessity of the new contribution to the 401(k) in this context and at the expense of unsecured creditors which total an amount exceeding \$109,000.00 as indicated in the plan. As such the court finds the plan is not proposed in good faith under 11 U.S.C. § 1325(a)(3).

DEBTOR REPLY

On September 6, 2022, the debtors filed a reply to the trustee's opposition. In addition to the reply properly filed supplemental Schedules I and J were filed. The schedules support the reply in

that they remove the voluntary 401(k) contribution; and support an increased payment to the chapter 13 plan. The court considers properly filed Schedules I and J to be part of the debtors' prima facie case which should be filed with the motion and not as a reply to opposition filed by the chapter 13 trustee. Counsel is cautioned that in future cases, where relevant, the court intends to deny any motion which is not accompanied at the outset by properly filed Schedules I and J.

The debtors propose to increase the plan payment to \$727.00. It appears to the court that this resolves the trustee's opposition to the motion.

Absent further opposition from the trustee the court will grant the motion.

DUPLICATE DOCKET CONTROL NUMBER

The docket control number given for this matter violates the court's Local Rules, LBR 9014-1(c), regarding proper use of docket control numbers. When using a docket control number, a party must use both letters (usually initials of the attorney for the movant) and a number. The numerical portion of the docket control number must be "the number that is one number higher than the number of motions previously filed by said attorney" in that particular case. LBR 9014-1(c)(3). Thus, a party may not use the same docket control number on separate matters filed in the same case. The docket control number in this matter is the same docket control number used in the Motion for Compensation to be heard on the same calendar as the instant 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).

While its use is not yet mandatory Candace Brooks, 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.

With one exception the Certificate of Service, ECF No. 83, is an example of the proper completion of EDC 7-005. Section 3 purports to limit notice under Fed. R. Bankr. 3015(h), LBR 3015-1(d)(3). While this is a motion to modify a chapter 13 plan after confirmation, the plan proposes to *reduce* the percentage paid to unsecured creditors from 75% to 26%. Thus, the limited notice provisions are inapplicable to this motion and notice to all creditors must be given. The error is not fatal in this case as Section 5 indicates that all creditors were served, and the Clerk's Matrix was attached to the Certificate of Service. A review of the

matrix shows that all creditors and parties in interest were served with the motion.

The court appreciates counsel's use of the Form EDC 7-005, Certificate of Service.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The debtor shall submit an appropriate order modifying plan to be approved by the chapter 13 trustee.

2. [20-22701](#)-A-13 **IN RE: EVAN PASTERNAK AND SONJA DURAN**
[CYB-4](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF BROOKS &
CARPENTER FOR CANDACE Y. BROOKS, DEBTORS ATTORNEY(S)
8-2-2022 [\[77\]](#)

CANDACE BROOKS/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Tentative 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: \$2,372.50

Additional Cost Reimbursement Requested: \$0

COMPENSATION AND EXPENSES

In this chapter 13 case, Candace Brooks, attorney for the debtors, has applied for an allowance of additional compensation. The applicant requests that the court allow compensation in the amount of \$2,372.50. The chapter 13 trustee has filed a non-opposition to the motion indicating that the compensation is adequately funded through the proposed modified chapter 13 plan. *See Non-Opposition*, ECF No. 84.

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 successfully prepared paperwork to modify the debtors' chapter 13 plan due to a significant change in the debtors' finances after having a baby.

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 \$2,372.50.

DUPLICATE DOCKET CONTROL NUMBER

The docket control number given for this matter violates the court's Local Rules, LBR 9014-1(c), regarding proper use of docket control numbers. When using a docket control number, a party must use both letters (usually initials of the attorney for the movant) and a number. The numerical portion of the docket control number must be "the number that is one number higher than the number of motions previously filed by said attorney" in that particular case. LBR 9014-1(c)(3). Thus, a party may not use the same docket control number on separate matters filed in the same case. The docket control number in this matter is the same docket control number used in the Motion to Modify Plan to be heard on the same calendar as the instant 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).

While its use is not yet mandatory Candace Brooks, 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.

With one minor exception the Certificate of Service, ECF No. 82, is textbook example of the proper completion of EDC 7-005. In Section 5 of the Certificate counsel has checked the box which states "All creditors and parties in interest" were served, while at the same time checking multiple boxes beneath that box. Checking additional boxes after checking the box which states "All creditors and parties in interest" is unnecessary, duplicative, and confusing.

The court notes that in this case limited notice, under Fed. R. Bankr. P. 2002(h), LBR 2002-3, would have been appropriate. The case was filed April 2, 2020, which is more than 70 days after the petition was filed. However, counsel may opt to serve all creditors and parties in interest if desired. Counsel is to be commended on her precise and skillful application of the new local rules.

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.

Candace Brooks' 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 \$2,372.50. The court authorizes the fees to be paid through the plan by the chapter 13 trustee.

3. [19-26305](#)-A-13 **IN RE: FRANCISCO QUINTANA**
[DPC-1](#)

CONTINUED MOTION TO DISMISS CASE
7-18-2022 [\[32\]](#)

PETER MACALUSO/ATTY. FOR DBT.

No Ruling

4. [22-21008](#)-A-13 **IN RE: CYNTHIA PAYSINGER**
[PGM-2](#)

MOTION TO CONFIRM PLAN
7-27-2022 [\[33\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Tentative Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

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

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

PLAN FEASIBILITY

The proposed plan must be feasible. 11 U.S.C. § 1325(a)(6). Feasibility is a "factual determination" as to the plan's "reasonable likelihood of success." *First Nat'l Bank of Boston v. Fantasia (In re Fantasia)*, 211 B.R. 420, 423 (B.A.P. 1st Cir. 1997). The bankruptcy court needs to "be satisfied that the debtor has the present as well as the future financial capacity to comply with the terms of the plan." *Id.* As one court summarized feasibility, "Thus, a plan is not feasible and is not confirmable if a debtor's income will not support the plan's proposed payments. *In re Barnes*, 275 B.R. 889, 894 (Bankr. E.D. Cal.2002) ("[T]he debtors showed no disposable income with which to fund a plan.... [T]he debtors have been unable to actually pay the amount projected ... to the trustee."); *In re Bernardes*, 267 B.R. 690, 695 (Bankr. D.N.J. 2001) ("While the feasibility requirement is not rigorous ... the plan

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

Schedules Inconsistent with Pay Advices

The trustee contends the plan is not feasible under 11 U.S.C. § 1325(a)(6) because the information in the debtor's most recently filed Schedule I is inconsistent with the information the trustee has received in a pay advice provided by the debtor and dated May 25, 2022. The trustee calculates the gross year to date average from the pay advice at \$1,660.56 per month. Conversely, a supplemental Schedule I, filed July 27, 2022, in support of this motion lists the debtor's gross monthly employment income is \$1,895.53. See ECF No. 42. Schedule I contains no explanatory comments regarding changes to the debtor's income, nor does the debtor's declaration in support of the motion to confirm provide any detail regarding changes to the debtor's income. See *Declaration*, ECF No. 40. Without additional information explaining the difference between the schedules and the pay advices the court finds the plan is not feasible.

Multiple Chapter 13 Filings

The court notes that the debtor has filed the following chapter 13 cases since 2014. Each of the cases were filed in the Eastern District of California.

Case Number	Date Filed	Confirmed	Attorney	Dismissed
2014-28235	August 13, 2014	No	Pro Se	August 27, 2014
2014-32109	December 15, 2014	No	Peter Macaluso	February 18, 2015
2016-20016	January 5, 2016	Yes, Order Extending Stay	Peter Macaluso	December 8, 2017
2018-23464	June 1, 2018	Yes, Order Extending Stay	Peter Macaluso	March 10, 2022

The most recently filed Schedule I in case, 2018-23464, shows the debtor's son provided support in the amount of \$830.00 per month. See *Schedule I* filed, March, 15, 2021, *In re Cynthia Paysinger*, 2018-23464, E.D. Cal. Bankr. (2018), ECF No. 176.

In the 2016 Chapter 13 case the debtor's son also provided monthly contributions in the amount of \$500.00. See *Schedule I*, filed January 5, 2016, *In re Cynthia Paysinger*, 2016-20016, E.D. Cal. Bankr. (2016), ECF No. 1. A contribution of \$400.00 per month was projected in case number 2014-23464.

This is the debtor's fifth chapter 13 case in 8 years. The debtor has failed to obtain a discharge in any of the prior cases. The debtor's son has made increased contributions to the plan in successive cases. Yet the plans have all failed. Evidence in addition to general statements regarding the willingness of the debtor's son is required to satisfy the debtor's burden of proving that the plan is feasible under 11 U.S.C. § 1325(b) (6).

The court will deny the motion.

DEBTOR REPLY

On September 6, 2022, the debtor filed a reply to the trustee's opposition which is accompanied by the declaration of the debtor. The debtor states "I have been offered a third job as a counsel of disabled adults, the Peach Hub." See *Declaration*, ECF No. 56, 1:24-26. The declaration does not state when the debtor will begin the additional employment, nor does it indicate how much she will be paid. The debtor also acknowledges that the trustee's calculation of the income in her profit and loss statements is accurate but states "now that the covid-19 (sic) has ended I estimate an increase to the \$1,895.83..." Other than this general assertion that her income will increase the debtor fails to state how she is positioned to increase her income.

Absent specific information regarding the debtor's income from her new employment and projected increases at work the court finds the debtor has failed to meet her burden of proof and finds that the proposed plan is not feasible under 11 U.S.C. § 1325(a) (6).

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.

5. [17-26116](#)-A-13 **IN RE: AARON/PHELICIA MCGEE**
[MWB-9](#)

MOTION TO MODIFY PLAN
7-26-2022 [\[155\]](#)

MARK BRIDEN/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative 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: Civil Minute Order

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

CHAPTER 13 PLAN MODIFICATION

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

Chapter 13 debtors seeking plan modification have the burden of proving that all requirements of § 1322(a) and (b) and § 1325(a) have been met. See 11 U.S.C. §§ 1322(a)-(b), 1325(a), 1329(b)(1); see also *In re Powers*, 202 B.R. at 622 ("[Section] 1329(b)(1) protects the parties from unwarranted modification motions by ensuring that the proposed modifications satisfy the same standards as required of the initial plan."); see also *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994); *In re Andrews*, 49 F.3d 1404, 1408 (9th Cir. 1995).

MOTION MUST BE SUPPORTED BY CREDIBLE EVIDENCE

Every motion or other request for relief shall be accompanied by evidence establishing its factual allegations and demonstrating that the movant is entitled to the relief requested. Affidavits and declarations shall comply with Fed. R. Civ. P. 56(c)(4).

LBR 9014-1(d)(3)(D).

The trustee objects to the motion to modify the plan contending that the motion is not supported by credible evidence as required. The court agrees that the initial declaration filed by the debtors was

insufficient and incomprehensible in the context of a motion to modify a confirmed chapter 13 plan.

However, the court notes that the debtors filed a second declaration in support of the motion after the trustee filed his opposition. *See Declaration*, ECF No. 166. The sufficiency of evidence as proffered in the debtors' initial supporting declaration was the sole basis for the trustee's opposition to the motion. The plan will be completed upon the granting of the motion to modify. Absent further objection by the trustee the court will grant the motion to modify.

The court finds that the debtors have sustained this burden of proof. The court will grant the motion and approve the modification.

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

IT IS ORDERED that the motion is granted.

6. [19-24016](#)-A-13 **IN RE: SHARON PETERSEN**
[DPC-1](#)

CONTINUED MOTION TO DISMISS CASE
5-17-2022 [\[60\]](#)

NICHOLAS WAJDA/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.

Final Ruling

Motion: Dismiss Case

Notice: Continued from July 19, 2022

Disposition: Denied without prejudice

Order: Civil minute order

The hearing on the chapter 13 trustee's motion to dismiss was continued to allow for further briefing by the parties

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

NOTICE

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

Motions under 11 U.S.C. § 1307(c)

A motion to dismiss a chapter 13 case is not included in Fed. R. Bankr. P. 2002. Thus, the motion is brought pursuant to Rule 9014 which requires that notice and an opportunity to be heard shall be "afforded the party against whom relief is sought."

Rules 9013 and 9007

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

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

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

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

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

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

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

When notice of a motion is served without the motion or supporting papers, the notice of hearing shall also succinctly and sufficiently describe the nature of the relief being requested and set forth the essential facts necessary for a party to determine whether to oppose the motion. *However, the motion and supporting papers shall*

be served on those parties who have requested special notice and those who are directly affected by the requested relief.

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

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

In this case creditor Synchrony Bank c/o PRA Receivables Management, has filed a request for special notice. See *Request for Notice*, ECF No. 9. The request for notice specifically states that it requests notices of all motions filed pursuant to Fed. R. Bankr. P. 2002. However, LBR 9014-1(d)(3)(B)(iv) does not limit the notice required (to special notice creditors) to Rule 2002 motions. Thus, the trustee is required to serve his motion to dismiss or convert under 11 U.S.C. § 1307(c) on creditors who have filed requests for special notice.

The Certificate of Service filed in support of this motion by the chapter 13 trustee does not list the creditor as a party served with the notice as required. See *Certificate of Service*, ECF No. 63.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is denied without prejudice.

7. [19-24624](#)-A-13 **IN RE: THOMAS/SELIMA GARRIS**
[TLA-2](#)

MOTION TO MODIFY PLAN
8-1-2022 [\[82\]](#)

THOMAS AMBERG/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by movant, approved by the trustee

Subject: Modified Chapter 13 Plan, filed August 1, 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 debtors seek approval of the modified plan filed August 1, 2022. The motion to modify plan is supported by supplemental Schedules I and J, filed on August 1, 2022, ECF No. 88. The chapter 13 trustee has filed a non-opposition to this motion.

CHAPTER 13 PLAN MODIFICATION

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

Chapter 13 debtors seeking plan modification have the burden of proving that all requirements of § 1322(a) and (b) and § 1325(a) have been met. See 11 U.S.C. §§ 1322(a)-(b), 1325(a), 1329(b)(1); see also *In re Powers*, 202 B.R. at 622 ("[Section] 1329(b)(1) protects the parties from unwarranted modification motions by ensuring that the proposed modifications satisfy the same standards as required of the initial plan."); see also *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994); *In re Andrews*, 49 F.3d 1404, 1408 (9th Cir. 1995).

The court finds that the debtor has sustained this burden of proof. The court will grant the motion and approve the modification.

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 Thomas Amberg filed a Certificate of Service, ECF No. 87. With one exception the Certificate of Service represents an example of the proper use of the new LBR 3015-1(d)(3) and Fed. R. Bank. P. 3015(h). The Clerk's Matrix of Registered Users has not been attached as Attachment 6B1. This error is not fatal as the court infers proper service based upon the attachment of the Clerk's Matrix. Counsel is to be commended on his precise and skillful application of the new local rules.

8. [22-21426](#)-A-13 **IN RE: TAMI TRIHUB**
[DPC-2](#)

OBJECTION TO DISCHARGE BY DAVID P. CUSICK
8-4-2022 [\[19\]](#)

THOMAS MOORE/ATTY. FOR DBT.

Final Ruling

Motion: Objection to Discharge

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

Disposition: Sustained

Order: Civil minute order

Instant Petition Filed: June 6, 2022

Previous Petition: 2020-23503, E.D. Cal. Bankr. (2020)

Previous Chapter: 7

Previous Petition Filed: July 16, 2020

Previous Discharge: November 2, 2020

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 chapter 13 trustee has objected to the debtor(s) discharge in this case citing the debtor(s) ineligibility pursuant to 11 U.S.C. §1328(f).

OBJECTION TO DISCHARGE - 11 U.S.C. § 1328(f)

11 U.S.C. § 1328(f)(1)) provides:

Notwithstanding subsections (a) and (b), the court shall not grant a discharge of all debts provided for in the plan or disallowed under section 502, if the debtor has received a discharge-

- (1) in a case filed under chapter 7, 11, or 12 of this title during the 4-year period preceding the date of the order for relief under this chapter,
- (2) in a case filed under chapter 13 of this title during the 2-year period preceding the date of such order.

The statute has only three elements for the discharge bar to trigger under 1328(f)(1). First, the debtor must have received a prior bankruptcy discharge.

Second, the prior case must have been filed under Chapters 7, 11, or 12.

Third, the case in which the discharge was received must have been filed during the 4- year period preceding the date of the order for relief under this [Chapter 13] chapter. The third element represents a significant change to the Bankruptcy Code, which previously imposed no time limitations for obtaining a discharge in a chapter 13 case filed after issuance of a discharge in a chapter 7 case.

Before BAPCPA, chapter 20 debtors could obtain a chapter 13 discharge after having received a discharge in chapter 7 without restriction. The Bankruptcy Abuse Prevention and Consumer Protection Act ("BAPCPA") enacted in 2005 imposed a restriction by adding § 1328(f), which states that a court cannot grant debtors a discharge in a chapter 13 case filed within four years of the filing of a case wherein a discharge was granted in chapter 7. §1328(f)(1).

Boukatch v. MidFirst Bank (In re Boukatch), 533 B.R. 292, 297 (9th Cir. BAP 2015).

Regarding the circumstances wherein a debtor receives a chapter 7 discharge and then files a subsequent chapter 13 petition the statute is clear, and the court shall not grant a discharge in these circumstances.

Relatively unambiguously, new §1328(f)((1) states mandatorily that the court "shall not" grant a discharge if the debtor received a discharge in a Chapter 7, 11 or 12 case "filed...during the 4-year period preceding the date of the order for relief under this chapter." The counting rule here is clear: the 'order for relief under this chapter' would be the date of filing the current Chapter 13

petition; the four-year period would run from the date of filing of the prior case in which the debtor received a discharge. In other words, the four-year bar to successive discharges runs from the *filing* of a prior Chapter 7 (11 or 12) case to the *filing* of the current Chapter case."

Keith M. Lunden, *Lunden On Chapter 13*, §152.2 at ¶ 3 (2021).

Because less than 4 years has passed since the filing of debtor(s) previous chapter 7 case on July 16, 2020, the debtor is not eligible for a discharge in this chapter 13 case. The court will sustain the trustee's objection to discharge.

CIVIL MINUTE ORDER

The court finds that the debtor is not entitled to a discharge in this case. 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 Discharge has been presented to the court. Having entered the default of the debtor for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the objection,

IT IS ORDERED that the objection is sustained; and

IT IS FURTHER ORDERED that the clerk shall not enter a discharge in this case.

9. [20-21929](#)-A-13 **IN RE: THOMAS/LAURETTA HALL**
[CYB-4](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF BROOKS
CARPENTER FOR CANDACE Y. BROOKS, DEBTORS ATTORNEY(S)
8-5-2022 [\[66\]](#)

CANDACE BROOKS/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Tentative Ruling

Application: Allowance of Additional Compensation

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

Disposition: Approved

Order: Civil minute order

Number of Requests for Additional Compensation: First

Additional Compensation Requested: \$4,680.00

Additional Cost Reimbursement Requested: \$0

COMPENSATION AND EXPENSES

In this chapter 13 case, Candace Brooks, attorney for the debtors, has applied for an allowance of additional compensation. The applicant requests that the court allow compensation in the amount of \$4,680.00.

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 successfully drafted and prosecuted a motion to purchase a residence on behalf of the debtors. The services included drafting the motion and supporting Schedules I and J, communicating with the debtors, trustee, and third parties, preparing the motion for additional compensation.

The motion is supported by the declaration of the debtors, ECF No. 69. The chapter 13 trustee has filed a non-opposition to the motion

and indicated that the current confirmed plan funds with the inclusion of the additional fees. See *Non-Opposition*, ECF No. 73. 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 \$4,680.00.

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 Candace Brooks, 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.

With one minor exception the Certificate of Service, ECF No. 72, is textbook example of the proper completion of EDC 7-005. In Section 5 of the Certificate counsel has checked the box which states "All creditors and parties in interest" were served, while at the same time checking multiple boxes beneath that box. Checking additional boxes after checking the box which states "All creditors and parties in interest" is unnecessary and duplicative.

The court notes that in this case limited notice, under Fed. R. Bankr. P. 2002(h), LBR 2002-3, would have been appropriate. The case was filed April 2, 2020, which is more than 70 days after the petition was filed. However, counsel may opt to serve all creditors and parties in interest if desired. Counsel is to be commended on her precise and skillful application of the new local rules.

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.

Candace Brook'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 \$4,680.00. The court authorizes the fees to be paid through the plan by the chapter 13 trustee.

10. [20-21831](#)-A-13 **IN RE: TANIA GILL**
[MMM-1](#)

CONTINUED MOTION TO APPROVE LOAN MODIFICATION
7-11-2022 [\[20\]](#)

MOHAMMAD MOKARRAM/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Approve Loan Modification

Notice: Continued from August 15, 2022

Disposition: Granted in part, denied in part

Order: Civil minute order

The debtor seeks an order authorizing the modification of her home mortgage held by Rushmore Loan Management Services, LLC.

The chapter 13 trustee opposes the motion indicating that the evidence proffered by the debtor does not state whether an impound account is required for property taxes and insurance, and if not, how the taxes and insurance will be paid; whether the modified monthly payment of \$772.63 includes taxes and insurance; and that the debtor has failed to file amended Schedules I and J in support of her motion. *See Opposition*, ECF No. 25. Therefore, the trustee has insufficient information to advise the court of the proposed loan modification's impact on the confirmed chapter 13 plan.

The hearing on this motion was continued to allow the debtor to augment the evidentiary record and file supplemental Schedules I and J in support of her motion. The debtor filed the required supplementary schedules on August 22, 2022, ECF No. 30. Schedule J states that the mortgage payment listed includes an impound account for taxes and insurance and that this is the amount contemplated by the loan modification. *Henceforth, this information must be provided in the motion to approve the modification and the declaration(s) in support of the motion.* The court considers this information to be an integral part of a debtor's prima facie case for the granting of this type of motion. It is not information which should be submitted only in the supplemental Schedules offered in support of the motion.

The chapter 13 trustee was ordered to evaluate the evidence filed by the debtor and to file a statement of position not later than August 30, 2022. The trustee has failed to file any further information.

Absent further opposition the court intends to issue the following ruling.

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 stay 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 § 362(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.

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. [22-21736](#)-A-13 **IN RE: ELIFAZ/LINDA MARTINEZ**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
8-17-2022 [\[14\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

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

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).

REDUCTION OF COLLATERAL VALUE WITHOUT A MOTION

LBR 3015-1(i) provides that "[t]he hearing [on a valuation motion] must be concluded before or in conjunction with the confirmation of the plan. If a motion is not filed, or it is unsuccessful, the Court may deny confirmation of the plan."

The sole basis of the trustee's objection to confirmation is that the debtors have failed to obtain orders valuing the collateral of Mariner Finance and Rent A Center.

In this case, the plan proposes to reduce the Class 2 secured claims of Mariner Finance and Rent A Center based on the value of the collateral securing such claim. While the debtors have not yet obtained a favorable order on the motions to determine the value of such collateral the debtors have filed the motions to value the collateral, PGM-1 and PGM-2. The motions to value collateral are set for hearing on September 27, 2022, at 9:00 a.m. The court will continue the trustee's objection to confirmation to coincide with the motions to value collateral.

If the motions to value collateral are granted the court will overrule the trustee's objection without further notice or hearing.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the hearing on the trustee's objection is continued to September 27, 2022, at 9:00 a.m.

12. [20-22143](#)-A-13 **IN RE: JODI/ROBERT GALLAGHER**
[DPC-2](#)

CONTINUED MOTION TO DISMISS CASE
7-18-2022 [\[51\]](#)

MUOI CHEA/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

Notice: Continued from August 15, 2022

Disposition: Denied without prejudice

Order: Civil minute order

The hearing on the chapter 13 trustee's motion to dismiss was continued to coincide with the hearing on the debtors' motion to modify plan.

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

NOTICE

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

Motions under 11 U.S.C. § 1307(c)

A motion to dismiss a chapter 13 case is not included in Fed. R. Bankr. P. 2002. Thus, the motion is brought pursuant to Rule 9014 which requires that notice and an opportunity to be heard shall be "afforded the party against whom relief is sought."

Rules 9013 and 9007

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

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

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

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

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

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

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

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

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

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

In this case creditor Synchrony Bank c/o PRA Receivables Management, has filed a request for special notice. See *Request for Notice*, ECF No. 8. The request for notice specifically states that it requests notices of all motions filed pursuant to Fed. R. Bankr. P. 2002. However, LBR 9014-1(d)(3)(B)(iv) does not limit the notice required

(to special notice creditors) to Rule 2002 motions. Thus, the trustee is bound to serve his motion to dismiss or convert under 11 U.S.C. § 1307(c) on creditors who have filed requests for special notice.

The Certificate of Service filed in support of this motion by the chapter 13 trustee does not list the creditor as a party served with the notice as required. See *Certificate of Service*, ECF No. 54.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is denied without prejudice.

13. [20-22143](#)-A-13 **IN RE: JODI/ROBERT GALLAGHER**
[MC-4](#)

AMENDED MOTION TO MODIFY PLAN
8-1-2022 [\[61\]](#)

MUOI CHEA/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

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

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

PLAN FEASIBILITY

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

Plan Delinquency

The trustee indicates that the plan payments are delinquent in the amount of \$840.00 under the terms of the proposed plan. The plan cannot be confirmed if the plan payments are not current.

CIVIL MINUTE ORDER

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

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

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

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

14. [22-21644](#)-A-13 **IN RE: CASSANDRA VISCIA**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
8-11-2022 [\[14\]](#)

GARY FRALEY/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: LBR 3015-1(c)(4), 9014-1(f)(2); non-opposition filed by the debtor

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).

The trustee contends the plan is not feasible under 11 U.S.C. § 1325 (a)(6). As a courtesy to the court the debtor filed a notice of non-opposition to the trustee's objection. *See Non-Opposition*, ECF No. 19. The debtor concedes the need to amend the supporting budget schedules and to object to a claim filed by the Internal Revenue Service. As such 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.

15. [22-21245](#)-A-13 **IN RE: ROBERT MURRAY**
[MCT-2](#)

AMENDED MOTION BY MELANIE TAVARE TO WITHDRAW AS ATTORNEY
8-25-2022 [\[36\]](#)

MELANIE TAVARE/ATTY. FOR DBT.

No Ruling

16. [22-21645](#)-A-13 **IN RE: MARTHA NEOMI MARTINEZ**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
8-9-2022 [\[19\]](#)

NIKKI FARRIS/ATTY. FOR DBT.

Final Ruling

The case was converted to Chapter 7 on September 7, 2022.
Accordingly, this matter will be removed from the calendar as moot.
No appearances are required.

17. [22-21652](#)-A-13 **IN RE: RICHARD/VICKIE CAMPBELL**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK
8-9-2022 [\[18\]](#)

JULIUS CHERRY/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).

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 \$165.00 with another payment of \$165.00 due August 25, 2022. The plan cannot be confirmed if the plan payments are not current.

Mathematical Feasibility

The trustee opposes confirmation of the plan contending the plan is not mathematically feasible. The trustee calculates that the plan will take 66 months to fund as proposed.

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

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

REDUCTION OF COLLATERAL VALUE WITHOUT A MOTION

LBR 3015-1(i) provides that "[t]he hearing [on a valuation motion] must be concluded before or in conjunction with the confirmation of the plan. If a motion is not filed, or it is unsuccessful, the Court may deny confirmation of the plan."

In this case, the plan proposes to reduce Onemain Financial's Class 2 secured claim based on the value of the collateral securing such

claim. But the debtor has not yet obtained a favorable order on a motion to determine the value of such collateral. Accordingly, the court must deny confirmation of the plan.

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).

It is unclear if Mr. Campbell is required to file tax returns based upon the claim filed by the Franchise Tax Board, Claim No. 2. Until the debtor provides additional evidence regarding his requirement to file returns the court cannot determine if all required tax returns have been filed.

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. [22-21655](#)-A-13 **IN RE: FLOYDETTIE JAMES**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK
8-10-2022 [\[13\]](#)

MATTHEW GRECH/ATTY. FOR DBT.

No Ruling

19. [19-23960](#)-A-13 **IN RE: TODD BISHOP**
[DBL-2](#)

MOTION TO MODIFY PLAN
7-23-2022 [\[43\]](#)

BRUCE DWIGGINS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by movant, approved by the trustee

Subject: First Modified Chapter 13 Plan, filed July 23, 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 modification of his chapter 13 plan. The motion is supported by supplemental Schedules I and J properly filed on July 23, 2022, ECF No. 41.

While the chapter 13 trustee initially opposed the motion the sole basis of the opposition was plan delinquency. On August 30, 2022, the trustee filed a supplemental pleading indicating that the payments under the proposed modified plan were current and that he no longer opposes the motion to modify. *See Trustee's Amended Response*, ECF No. 52.

The court will grant the motion.

CHAPTER 13 PLAN MODIFICATION

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

Chapter 13 debtors seeking plan modification have the burden of proving that all requirements of § 1322(a) and (b) and § 1325(a) have been met. See 11 U.S.C. §§ 1322(a)-(b), 1325(a), 1329(b)(1); see also *In re Powers*, 202 B.R. at 622 ("[Section] 1329(b)(1) protects the parties from unwarranted modification motions by ensuring that the proposed modifications satisfy the same standards as required of the initial plan."); see also *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994); *In re Andrews*, 49 F.3d 1404, 1408 (9th Cir. 1995).

The court finds that the debtor has sustained this burden of proof. The court will grant the motion and approve the modification.

20. [22-20961](#)-A-13 **IN RE: DAVID WILLIAMS**
[CDL-72822](#)

MOTION TO CONFIRM PLAN
8-1-2022 [\[33\]](#)

COLBY LAVELLE/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by the movant, approved by the trustee

Subject: Second Amended Chapter 13 Plan, filed July 27, 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 an order confirming his Second Amended Chapter 13 Plan filed July 27, 2022. The plan is supported by a properly filed Schedule I filed at the inception of the case in April 2022, and a supplemental Schedule J properly filed July 28, 2022, ECF No. 31. The chapter 13 trustee has filed a non-opposition to confirmation of the proposed plan, ECF No. 37.

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.

21. [22-20063](#)-A-13 **IN RE: NATHANIEL SOBAYO**
[DPC-2](#)

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

Tentative Ruling

Motion: Dismiss Case

Notice: Continued from August 2, 2022

Disposition: Granted

Order: Civil minute order

Date Petition Filed: January 11, 2022

Date Objection to Confirmation Sustained: March 30, 2022

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) as the debtor has failed to make all payments due under the plan. The trustee contends that the plan payments are delinquent in the amount of \$300.00. The trustee also filed the motion asserting that: 1) the debtor had failed to file an amended plan after the court sustained an objection to confirmation of the original plan on March 30, 2022; 2) the debtor had failed to tender financial documents to the trustee; 3) the bankruptcy schedules contained incomplete or inaccurate information and that they were not amended; 4) the debtor had filed previous bankruptcy cases and had not explained sufficiently how the instant case would be successful.

The hearing on this motion was continued from August 2, 2022, to allow the debtor to obtain an attorney to represent him in this proceeding. The trustee was ordered to file a status report by September 6, 2022, to advise the court whether the issues raised in the motion had been resolved.

On September 6, 2022, the trustee filed and served the status report. See *Status Report*, ECF No. 83. The trustee reports that plan payments are now current. However, the remaining bases of the trustee's motion have not been resolved as follows:

- 1) the debtor has not yet filed an amended plan;
- 2) there has been no substitution of attorney filed on the court's docket, thus the court presumes that the debtor has not retained counsel to represent him;
- 3) the trustee has not received the following business documents - completed business questionnaire, Wells Fargo Business Checking Account Statements (#1712) for July 11, 2021- December 30, 2021, Wells Fargo Checking Account Statements (#0864) for July 11, 2021- January 9, 2022, all financial statements belonging to the debtor's non-filing spouse, six individual months of profit and loss statements;
- 4) the following bankruptcy schedules have not been amended - Voluntary Petition, question 10, fails to list the non-filing spouse's Chapter 13, Schedule I fails to disclose the non-filing spouse's income, Schedule J fails to reflect the non-filing spouse's credit card debt, Schedule H fails to disclose any information regarding the debtor's nonfiling spouse, the Amended Statement of Financial Affairs fails to disclose payments made to Carrington Mortgage, any lawsuits, property being repossessed.

Each of these is an independent basis to dismiss the debtor's case for unreasonable delay which is prejudicial to creditors under 11 U.S.C. § 1327(c)(1). The case has been pending for eight months without a confirmed plan and it has been over five months since the court sustained the objections to confirmation of the originally proposed plan. The court will grant the motion.

Additional Information Since Filing the Motion

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).

In addition to the assertions made in the motion the trustee contends that the debtor may not have filed all tax returns due for 2019, 2020, and 2021. While the trustee has received copies of unsigned and self-prepared tax returns for 2019 and 2020 the Internal Revenue Service has filed a claim indicating that the returns for 2019, 2020, and 2021 have not yet been filed. See *Claim No. 15*.

For each of these reasons the court will dismiss the case.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The debtor has failed to properly prosecute his case and file an amended plan, amend bankruptcy schedules, and provide documents to the chapter 13 trustee. This constitutes cause to dismiss this case under 11 U.S.C. § 1307(c)(1). The court hereby dismisses this case.

22. [22-21563](#)-A-13 **IN RE: JOLENE/AARON SILVA**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
8-17-2022 [\[24\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Final Ruling

Motion: Objection to Confirmation

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

Disposition: Overruled as moot

Order: Civil minute order

THE CHAPTER 13 PLAN HAS BEEN SUPERSEDED

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 and supersedes the prior plan. 11 U.S.C. § 1323(b). Filing a modified plan renders moot any motion to confirm a prior plan. Because a modified plan has superseded the plan to be confirmed by this motion, the court will deny the motion as moot. The debtors have filed an amended chapter 13 plan and noticed a motion to confirm the plan on October 18, 2022.

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.

23. [22-21663](#)-A-13 **IN RE: TIMOTHY/ASHLEY GOETZ**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
8-10-2022 [\[19\]](#)

MIKALAH LIVIAKIS/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).

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 Income Information

The debtor has failed to provide the trustee with required income tax returns under 11 U.S.C. § 521(e)(2)(A). The tax returns are essential to the trustee's review of the proposed plan prior to the meeting of creditors.

The failure to provide tax returns 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 notes that the failure to timely provide the tax returns is also a basis for the dismissal of the case as the debtor is required to provide the trustee with a tax return (for the most recent tax year ending immediately before the commencement of the case and for which a federal income tax return was filed) no later than 7 days before the date first set for the first meeting of creditors. 11 U.S.C. § 521(e)(2)(A)-(B).

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 debtors admitted at the meeting of creditors that they were required to file tax returns for the four-year period prior to filing the case but have not yet done so. If the debtors have not filed 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.

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.

24. [22-21663](#)-A-13 **IN RE: TIMOTHY/ASHLEY GOETZ**
[NLG-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY PINGORA LOAN SERVICING,
LLC
8-5-2022 [\[18\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.
NICHOLE GLOWIN/ATTY. FOR MV.

Tentative Ruling

Objection: Creditor'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

Creditor, Pingora Loan Servicing objects to confirmation of the debtor's plan contending that the plan is not feasible under 11 U.S.C. § 1325(a)(6).

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).

The objecting creditor contends the plan is not feasible as its claim for arrears is significantly higher than the amount provided for in the debtors' plan. The plan provides for payment of mortgage arrears to the objecting creditor in the amount of \$80,000.00. See *Plan*, Section 3.07, ECF No. 3. Conversely the claim filed by the objecting creditor lists arrears in the amount of \$89,562.23. See *Claim No. 7*.

The objecting creditor calculates that the plan payment would need to increase by at least \$156.38 per month to pay the difference between the amount proposed in Class 1 of the plan and the amount claimed.

Schedules I and J filed at the inception of the case show that the debtors' monthly net income is \$4,401.00. See *Schedules I and J*, ECF No. 1. The monthly plan payment is \$4,400.00. Thus, the debtors do not have the ability to pay the amounts required to satisfy the claim filed by the objecting creditor. The court finds the plan is not feasible under 11 U.S.C. § 1325(a)(6).

The court will sustain the objection.

PROOF OF SERVICE NOT FILED AS SEPARATE DOCUMENT

Local Bankruptcy Rule 9014-1(e)(3) provides, "The proof of service for all pleadings and documents filed in support or opposition to a motion shall be filed as a separate document and shall bear the Docket Control Number. Copies of the pleadings and documents served shall not be attached to the proof of service. Instead, the proof of service shall identify the title of the pleadings and documents served."

In this case, the movant has attached the Certificate of Service to the Notice of the Motion, see ECF No. 18. The court finds the manner of service to violate Local Bankruptcy Rule 9014-1(e)(3). In the future, failure to following local rules may result in denial of relief or other sanctions. LBR 1001-1(g).

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.

Pingora Loan Servicing'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.

25. [22-21270](#)-A-13 **IN RE: ADAM/KRISTIN STERIO**
[MRL-1](#)

MOTION TO VALUE COLLATERAL OF INTERNAL REVENUE SERVICE
7-26-2022 [[23](#)]

MIKALAH LIVIAKIS/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Value Collateral Personal Property

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

Disposition: Granted

Order: Civil minute order

Value of Assets: \$27,904.00 - personal property of debtors

Senior Lien: \$6,900.00 held by Exeter Finance, LLC

Value of IRS Lien: \$21,004.00

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 respondent 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 debtors seek an order valuing their personal property which secures a tax lien held by the Internal Revenue Service. The Internal Revenue Service has filed an amended claim which matches

the values proffered by the debtors in this motion. See *Claim No. 15*. There is a senior lien held by Exeter Finance on a 2014 Dodge Journey.

VALUATION OF COLLATERAL

Chapter 13 debtors may value collateral by noticed motion. Fed. R. Bankr. P. 3012. Section 506(a) of the Bankruptcy Code provides, "An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property" and is unsecured as to the remainder. 11 U.S.C. § 506(a). For personal property, value is defined as "replacement value" on the date of the petition. *Id.* § 506(a)(2). For "property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." *Id.* The costs of sale or marketing may not be deducted. *Id.*

In this case, the debtor seeks to value collateral consisting of personal property described as all personal property held by the debtors and listed in the debtors' bankruptcy schedules and motion. The court values the collateral of the Internal Revenue Service at \$21,904.00.

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.

The debtor's motion to value personal property collateral 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 motion,

IT IS ORDERED that the motion is granted. The personal property collateral described as all personal property of the debtors has a value of \$27,904.00. A senior lien on the collateral, a 2014 Dodge Journey, has been identified in the amount of \$6,900.00. The respondent has a secured claim in the amount of \$21,004.00 equal to the value of the collateral that is unencumbered by senior liens.

26. [22-21972](#)-A-13 **IN RE: GINA VASQUEZ**
[MJG-1](#)

MOTION TO IMPOSE AUTOMATIC STAY
8-29-2022 [\[13\]](#)

MATTHEW GILBERT/ATTY. FOR DBT.

Tentative Ruling

Motion: Impose 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 imposition of the automatic stay under 11 U.S.C. § 362(c)(4)(B). The debtor has paid the lump sum payment due under her proposed plan early in the amount of \$12,000.00. This represents the amount refunded to her by the chapter 13 trustee upon the dismissal of the prior chapter 13 case. The debtor has filed timely all documents required in the instant case, fully paid the filing fee, and resolved the repairs to her HVAC system at home which caused the initial delinquency in the most recently filed case, *In re Gina Vasquez*, Case No. 2021-23215, E.D. Bankr. (2021).

IMPOSITION OF THE STAY

Upon request of a party in interest, the court may impose the automatic stay where the debtor has had two or more previous bankruptcy cases that were pending within the 1-year period prior to the filing of the current bankruptcy case but were dismissed. See 11 U.S.C. § 362(c)(4)(B). The stay may be imposed "only if the party in interest demonstrates that the filing of the *later case* is in *good faith* as to the creditors to be stayed." *Id.* (emphases added). However, the motion must be filed no later than 30 days after the filing of the later case. *Id.* The statute does not require the hearing to be completed within such 30-day period.

The court finds that 2 or more cases were pending within the one-year period before the filing of the current bankruptcy case but were dismissed. 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.

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 Gilbert filed a Certificate of Service, ECF No. 18. 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)(2) is supported the Clerk's Matrix of Creditors, dated August 29, 2022. Counsel is to be commended on his precise and skillful application of the new local rules.

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 impose 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 imposed in this case. The automatic stay shall remain in effect to the extent provided by the Bankruptcy Code. The automatic stay shall be effective upon the date of entry of this order.

27. [22-21175](#)-A-13 **IN RE: REBECCA MACIAS**
[MB-1](#)

MOTION TO CONFIRM PLAN
8-4-2022 [\[27\]](#)

MICHAEL BENAVIDES/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Confirmation of a Chapter 13 Plan

Disposition: Denied without prejudice

Order: Civil minute order

All creditors and parties in interest have not received the notice required by Federal Rule of Bankruptcy Procedure 2002(b). The certificate of service shows that several creditors or parties in interest have not received notice or have not received notice at the correct address.

For matters requiring notice to all creditors and parties in interest, the court prefers that a current copy of the ECF master mailing list, accessible through PACER, be attached to the certificate of service to indicate that notice has been transmitted to all creditors and parties in interest. The copy of the master mailing list should indicate a date near in time to the date of service of the notice. The court notes that the moving party failed to use the court's mailing matrix in this case. See Certificate of Service ECF No. 31.

While its use is not yet mandatory the court notes that use of the recently approved standardized Certificate of Service, EDC 7-005 would have prevented this error in service and would have required use of the Clerk's Mailing Matrix. 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.

CIVIL MINUTE ORDER

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

The debtor's Motion to Confirm Chapter 13 Plan has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

28. [19-27880](#)-A-13 **IN RE: JONATHAN GARCIA**
[DPC-4](#)

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

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

Final Ruling

Motion: Dismiss Case

Notice: Continued from August 2, 2022

Disposition: Denied

Order: Civil minute order

The hearing on this motion was continued from August 2, 2022, to allow for hearing on the debtor's motion to modify the chapter 13 plan. The motion to modify (RLJ-4) has been granted

As such the court will deny this motion to dismiss.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is denied.

29. [19-27880](#)-A-13 **IN RE: JONATHAN GARCIA**
[RLJ-4](#)

MOTION TO MODIFY PLAN
8-5-2022 [\[136\]](#)

RICHARD JARE/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by movant, approved by the trustee

Subject: Third Modified Chapter 13 Plan, filed August 5, 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 Third Modified Chapter 13 Plan, filed August 5, 2022. The plan is supported by supplemental Schedules I and J properly filed on August 5, 2022, ECF No. 140. The chapter 13 trustee has filed a non-opposition to this motion, ECF No. 143.

CHAPTER 13 PLAN MODIFICATION

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

Chapter 13 debtors seeking plan modification have the burden of proving that all requirements of § 1322(a) and (b) and § 1325(a) have been met. See 11 U.S.C. §§ 1322(a)-(b), 1325(a), 1329(b)(1); see also *In re Powers*, 202 B.R. at 622 ("[Section] 1329(b)(1) protects the parties from unwarranted modification motions by ensuring that the proposed modifications satisfy the same standards as required of the initial plan."); see also *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994); *In re Andrews*, 49 F.3d 1404, 1408 (9th Cir. 1995).

The court finds that the debtor has sustained this burden of proof. The court will grant the motion and approve the modification.

30. [22-21483](#)-A-13 **IN RE: TERRY/PATRICIA OETZEL**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
8-18-2022 [\[21\]](#)

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.

31. [21-22486](#)-A-13 **IN RE: ANNA MURPHY**
[PGM-6](#)

OBJECTION TO CLAIM OF CHARLEY SMITH FAMILY TRUST, CLAIM
NUMBER 14-3
7-29-2022 [\[214\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

32. [21-22486](#)-A-13 **IN RE: ANNA MURPHY**
[PGM-7](#)

MOTION TO CONFIRM PLAN
7-29-2022 [\[209\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

33. [22-21388](#)-A-13 **IN RE: KATHY ADAMS-BERRY**
[DPC-2](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
8-17-2022 [\[23\]](#)

PETER CIANCHETTA/ATTY. FOR DBT.

Final Ruling

Motion: Objection to Claim of Exemptions

Disposition: Continued to November 1, 2022, at 9:00 a.m.

Order: Civil minute order

The chapter 13 trustee has filed an objection to the debtor's claim of exemptions.

NOTICE IS INSUFFICIENT

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

Unless a different amount of time is required by the Federal Rules of Bankruptcy Procedure, these Local Rules, or by order of the Court, or the moving party elects to give the notice permitted by LBR 9014-1(f)(2), the moving party shall file and serve the motion at least twenty-eight (28) days prior to the hearing date.

LBR 9014-1(f)(1).

The trustee's objection to the debtor's claim of exemptions was noticed under LBR 9014-1(f)(1). *See Notice*, ECF No. 26. The Notice and Objection was served on August 17, 2022. *See Certificate of Service*, ECF No. 26. Thus, only 27 days' notice was provided instead of the 28 days' notice required under LBR 9014-1(f)(1).

The court will continue the hearing to November 1, 2022, at 9:00 am to allow for sufficient notice and proper service of the objection on the debtor and debtor's counsel.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the hearing on this motion shall be continued until November 1, 2022, at 9:00 a.m. to allow for proper service of this motion on the debtor.

IT IS FURTHER ORDERED that the chapter 13 trustee shall file and serve an amended notice of the continued hearing date on the debtor and all interested parties not later than September 27, 2022. The amended notice shall inform the debtor and all interested parties that any opposition to the objection must be in writing, served, and filed with the court not later than 14 days prior to the hearing on the motion.

IT IS FURTHER ORDERED that not later than September 27, 2022, the chapter 13 trustee shall file a Certificate of Service indicating compliance with the service required in this order.

34. [22-21690](#)-A-13 **IN RE: TRACI HAMILTON**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
8-17-2022 [\[31\]](#)

RICHARD JARE/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).

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 failed to produce the following documents: the Business Questionnaire (with attachments); 2020 individual tax returns; any tax returns filed on behalf of Traci's Janitorial LLC, or any other business entity, partnership and/or corporation; and six months of individual Profit and Loss Statements for each business, including but not limited to the janitorial business, Instacart and Uber Eats.

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).

Failure to Provide Business Attachments

The debtor has failed to provide required attachments to Schedule I reflecting projected income and expenses for the operation of businesses. The debtor operates a janitorial business. She also

receives income from Instacart and Uber Eats. Without complete information regarding each of the enterprises the trustee cannot evaluate the debtor's proposed budget or her ability to perform the plan. Therefore, the trustee cannot state whether he believes the plan is feasible under 11 U.S.C. § 1325(a)(6).

Unclear Treatment of Timeshare in the Plan

The debtor has scheduled a Westgate the Flamingo Bay, LCC/Las Vegas Timeshare in Class 4 of the Plan. The proposed payments are \$270.04 per month. At the meeting of creditors, the debtor indicated a revised intention to surrender the timeshare. If the debtor's interest in the timeshare is surrendered additional funds will be available to pay unsecured creditors. As the debtor's intentions regarding the timeshare are unclear it is impossible for the court to determine whether the plan is feasible, proposed in good faith or pays all available income into the plan. See 11 U.S.C. §§ 1325(a)(3), (6), 1326(b).

REDUCTION OF COLLATERAL VALUE WITHOUT A MOTION

LBR 3015-1(i) provides that "[t]he hearing [on a valuation motion] must be concluded before or in conjunction with the confirmation of the plan. If a motion is not filed, or it is unsuccessful, the Court may deny confirmation of the plan."

In this case, the plan proposes to reduce Credit Acceptance Corporation's Class 2 secured claim based on the value of the collateral securing such claim. But the debtor has not yet obtained a favorable order on a motion to determine the value of such collateral. Accordingly, the court must deny confirmation of the plan.

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 reports that the debtor admitted at the meeting of creditors that she failed to list the following assets in her bankruptcy schedules: \$16,000.00 cash from 2021 tax refunds; 401(k) account into which the debtor is currently making contributions.

As of September 7, 2022, the debtor has failed to amend her schedules to list these assets. In addition to evidencing that the plan is not proposed in good faith under 11 U.S.C. § 1325(a)(3) the debtor's failure to schedule all assets makes it impossible for the trustee to determine if the plan satisfies the liquidation test of § 1325(a)(4).

The trustee also contends that information provided in Schedules J conflicts with information provided at the meeting of creditors regarding the size of the debtor's household. Without this information the trustee cannot evaluate the feasibility of the proposed plan, nor can he properly perform the calculation required under 11 U.S.C. § 1325(b).

The court sustains each of the trustee's objections.

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.

35. [22-21008](#)-A-13 **IN RE: CYNTHIA PAYSINGER**
[PGM-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK, NA
8-30-2022 [[52](#)]

PETER MACALUSO/ATTY. FOR DBT.
DIANE WEIFENBACH/ATTY. FOR MV.

Tentative Ruling

Motion: Objection to Confirmation of Chapter 13 Plan

Notice: LBR 3015-1(d)(1), 9014-1(f)(1); written opposition filed by U.S. Bank, NA

Disposition: Sustained

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). U.S. Bank, NA opposes the motion, objecting to confirmation.

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

PLAN FEASIBILITY

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

The creditor objects to confirmation of the plan contending that the plan is not feasible. Contributions to the plan in the amount of \$885.00 per month are made by the debtor's son, Keenan Shinn. Mr. Shinn has filed a declaration stating his willingness to contribute payments of \$885.00 per month toward his mother's expenses each month. See *Declaration of Keenan Shinn*, ECF No. 39. While the declaration provides information regarding Mr. Shinn's willingness to make contributions and states the source of his income and amounts earned in general terms the declaration fails to provide any evidence of Mr. Shinn's expenses. Thus, the court cannot assess the feasibility of the plan.

The court notes that the debtor has filed the following chapter 13 cases since 2014. Each of the cases were filed in the Eastern District of California.

Case Number	Date Filed	Confirmed	Attorney	Dismissed
2014-28235	August 13, 2014	No	Pro Se	August 27, 2014
2014-32109	December 15, 2014	No	Peter Macaluso	February 18, 2015
2016-20016	January 5, 2016	Yes, Order Extending Stay	Peter Macaluso	December 8, 2017
2018-23464	June 1, 2018	Yes, Order Extending Stay	Peter Macaluso	March 10, 2022

The most recently filed Schedule I in case, 2018-23464, shows the debtor's son provided support in the amount of \$830.00 per month. See *Schedule I* filed, March 15, 2021, *In re Cynthia Paysinger*, 2018-23464, E.D. Cal. Bankr. (2018), ECF No. 176.

In the 2016 Chapter 13 case the debtor's son also provided monthly contributions in the amount of \$500.00. See *Schedule I*, filed January 5, 2016, *In re Cynthia Paysinger*, 2016-20016, E.D. Cal. Bankr. (2016), ECF No. 1. A contribution of \$400.00 per month was projected in case number 2014-23464.

This is the debtor's fifth chapter 13 case in 8 years. The debtor has failed to obtain a discharge in any of the prior cases. The debtor's son has made increased contributions to the plan in successive cases. Yet the plans have all failed. Evidence in addition to general statements regarding the willingness of the debtor's son is required to satisfy the debtor's burden of proving that the plan is feasible under 11 U.S.C. § 1325(b)(6).

The court will deny 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 Diane Weifenbach filed a Certificate of Service, ECF No. 54. 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) is supported by the Clerk's Matrix of Registered Users of the Court's Electronic Filing System. Counsel and her staff are to be commended on the precise and skillful application of the new local rules.

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 movant's objection to confirmation of the debtor's first amended 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 sustained. The court denies confirmation of the chapter 13 plan.