



**UNITED STATES BANKRUPTCY COURT
Eastern District of California**

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

DAY: TUESDAY
DATE: SEPTEMBER 24, 2024
CALENDAR: 9:00 A.M. CHAPTER 13 CASES

Unless otherwise ordered, all matters before Chief Judge Fredrick E. Clement shall be simultaneously: (1) **IN PERSON** at Sacramento Courtroom No. 28, (2) via **ZOOMGOV VIDEO**, (3) via **ZOOMGOV TELEPHONE**, and (4) via **COURTCALL**.

You may choose any of these options unless otherwise ordered or stated below.

All parties who wish to appear at a hearing remotely must sign up by 4:00 p.m. **one business** day prior to the hearing.

Information regarding how to sign up can be found on the **Remote Appearances** page of our website at:

<https://www.caeb.uscourts.gov/Calendar/RemoteAppearances>.

Each party who has signed up will receive a Zoom link or phone number, meeting I.D., and password via e-mail.

If the deadline to sign up has passed, parties who wish to appear remotely must contact the Courtroom Deputy for the Department holding the hearing.

Please also note the following:

- Parties in interest may connect to the video or audio feed free of charge and should select which method they will use to appear when signing up.
- Members of the public and the press appearing by **ZoomGov** may only listen in to the hearing using the zoom telephone number. Video appearances are not permitted.
- Members of the public and the press may not listen in to the trials or evidentiary hearings, though they may appear in person in most instances.

To appear remotely for law and motion or status conference proceedings, you must comply with the following guidelines and procedures:

- Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
- Review the court's [Zoom Procedures and Guidelines](#) for these, and additional instructions.
- Parties appearing via CourtCall are encouraged to review the [CourtCall Appearance Information](#).

If you are appearing by ZoomGov phone or video, please join at least 10 minutes prior to the start of the calendar and wait with your microphone muted until the matter is called.

Unauthorized Recording is Prohibited: Any recording of a court proceeding held by video or teleconference, including screen shots or other audio or visual copying of a hearing is prohibited. Violation may result in sanctions, including removal of court-issued media credentials, denial of entry to future hearings, or any other sanctions deemed necessary by the court. For more information on photographing, recording, or broadcasting Judicial Proceedings, please refer to Local Rule 173(a) of the United States District Court for the Eastern District of California.

PRE-HEARING DISPOSITION INSTRUCTIONS

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. However, 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. [24-22001](#)-A-13 **IN RE: LEON BROWN**
[MJD-1](#)

MOTION TO CONFIRM PLAN
8-14-2024 [[22](#)]

MATTHEW DECAMINADA/ATTY. FOR DBT.

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by the movant, approved by the trustee

Subject: Amended Chapter 13 Plan, filed August 14, 2024

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 the Amended Chapter 13 Plan, ECF No. 24. The plan is supported by Schedules I and J filed at the inception of the case on May 8, 2024, ECF No. 1. The Chapter 13 trustee has filed a non-opposition to the motion, ECF No. 28.

CHAPTER 13 PLAN CONFIRMATION

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

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

2. [24-23004](#)-A-13 **IN RE: SHELLEY BETTENCOURT-TILLMAN**
[DPC-1](#)

MOTION TO DISMISS CASE
8-27-2024 [\[15\]](#)

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: September 10, 2024

Opposition Filed: Unopposed

Cause: 11 U.S.C. § 1307(c)(1) - Plan Delinquency; failure to attend meeting of creditors; failure to provide documents

Best Interests of Creditors/Estate: Dismiss

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).

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. Payments under the plan are delinquent in the amount of \$5,841.43 with one payment(s) of 5,841.43 due prior to the hearing on this motion.

The trustee also moves for dismissal as the debtor failed to: (1) attend the required meeting of creditors on August 15, 2024; (2) provide required tax returns under 11 U.S.C. § 521; and (3) file a plan which provides a plan term or file a motion to confirm the plan.

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.

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 this chapter 13 case has been presented to the court. Having entered the default of respondent debtor 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 because of the delinquency under the chapter 13 plan in this case as well as the debtor's failure to (1) attend the required meeting of creditors on August 15, 2024; (2) provide required tax returns under 11 U.S.C. § 521; and (3) file a plan which provides a plan term or file a motion to confirm the plan. The court hereby dismisses this case.

3. [24-22306](#)-A-13 **IN RE: JOSE/ALICIA SANTANA**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE DAVID
P. CUSICK
7-17-2024 [\[22\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: Continued from August 13, 2024

Disposition: Overruled

Order: Civil minute order

The hearing on the Chapter 13 trustee's objection to confirmation was continued to allow the parties to augment the evidentiary record. The debtor(s) filed opposition as ordered.

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 sole basis for the trustee's objection was the debtors' failure to attend the meeting of creditors. The debtors attended the continued meeting of creditors, and the trustee has concluded the meeting.

Accordingly, the court will overrule the objection. The debtor(s) shall submit an order confirming the plan which has been approved by the Chapter 13 trustee.

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 overruled.

4. [24-23006](#)-A-13 **IN RE: STANLEY BERMAN**
[DPC-1](#)

MOTION TO DISMISS CASE
8-27-2024 [\[22\]](#)

STANLEY BERMAN/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

Notice: LBR 9014-1(f)(1); written opposition filed by the debtor

Disposition: Granted

Order: Civil minute order

Opposition Due: September 10, 2024

Opposition Filed: September 9, 2024 - timely

Cause: 11 U.S.C. § 1307(c)(1) - Plan Delinquency; failure to attend meeting of creditors; failure to provide certain business documents; failure to provide Social Security and identification information

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 f \$334.24 with one payment(s) of \$334.24 due prior to the hearing on this motion.

The trustee also seeks dismissal contending that the debtor has failed to: (1) attend the meeting of creditors; (2) provide Social Security and identification information as required; and (3) provide certain business documents.

The debtor has filed a timely opposition which contains the debtor's declaration, ECF No. 34. The declaration is very difficult to read. However, it appears that the debtor contends that he is current in plan payments and has provided the identification documents and information sought by the trustee. The declaration is insufficient as it does not state when, how or in what amounts payments were tendered to the trustee. Moreover, the opposition fails to state which documents were sent to the trustee and when. The debtor acknowledges that he did not appear at the meeting of creditors.

The opposition does not fully resolve the grounds for dismissal. The court is unable to deny the motion given the debtor's failure to attend the meeting of creditors, the outstanding plan delinquency, and the failure to provide identification documents and business information. The court will grant the motion. Alternatively, the court will consider a conditional order in this case.

Trustee Status Report

On September 17, 2024, the trustee filed and served a status report. In the report the trustee indicates that the plan payments are current, and that the debtor has forwarded documents to the trustee. The trustee reports that the debtor has yet to attend the meeting of creditors. Status Report, ECF No. 40.

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 make all payments due under the chapter 13 plan in this case; failed to attend the meeting of creditors; failed to provide identification information and failed to provide business documents. Each of these bases constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1). The court hereby dismisses this case.

5. [24-23006](#)-A-13 **IN RE: STANLEY BERMAN**
[DPC-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE DAVID P. CUSICK
8-29-2024 [\[26\]](#)

STANLEY BERMAN/ATTY. FOR DBT.
RESPONSIVE PLEADING

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 November 5, 2024, at 9:00 a.m.

Order: Civil minute order

The Chapter 13 trustee objects to confirmation of the debtor(s) plan.

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 will continue the hearing on this objection to allow the parties to augment the evidentiary record.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on this objection will be continued to November 5, 2024, at 9:00 a.m. The court may rule in this matter without further hearing.

IT IS FURTHER ORDERED that the debtor(s) shall do one of the following:

(A) File a Statement of No Opposition. If the debtor(s) agree that the Chapter 13 trustee's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than October 8, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection not later than October 8, 2024; the response shall specifically address each issue raised in the trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than October 22, 2024. The evidentiary record will close after October 22, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the Chapter 13 trustee's objection by filing a modified plan, not later than October 8, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan.

IT IS FURTHER ORDERED that if the parties resolve the trustee's objection, and there are no additional objections to confirmation pending, then the debtor(s) may submit an order confirming the plan which has been signed by the Chapter 13 trustee. The trustee's signature on the order confirming plan represents to the court that no further objections to confirmation of the proposed plan are pending.

6. [23-20711](#)-A-13 **IN RE: JOSEPH RIVERA**
[DPC-1](#)

CONTINUED MOTION TO DISMISS CASE
7-19-2024 [[23](#)]

MARY TERRANELLA/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

Notice: Continued from August 27, 2024

Disposition: Denied

Order: Civil minute order

The hearing on this matter was continued to allow the parties to augment the record if necessary. On September 10, 2024, the Chapter 13 trustee filed a status report stating that he no longer wishes to pursue his motion and that plan payments were current. Status Report, ECF No. 32. The trustee requests that the court deny the motion.

Accordingly, the motion will be denied.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the motion to dismiss is denied.

7. [24-22416](#)-A-13 **IN RE: REYNALDO TABOT**
[KMM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TOYOTA MOTOR
CREDIT CORPORATION
7-18-2024 [[13](#)]

ERIC GRAVEL/ATTY. FOR DBT.
KIRSTEN MARTINEZ/ATTY. FOR MV.

Final Ruling

The objection has been withdrawn by the objecting creditor. Notice of Withdrawal, ECF No. 19. Fed. R. Civ. P. 41. No response has been filed by any party. Accordingly, the court will remove this matter from the calendar.

8. [24-22522](#)-A-13 **IN RE: AMRIT LAL**
[DPC-1](#)

MOTION TO DISMISS CASE
8-27-2024 [[24](#)]

ANH NGUYEN/ATTY. FOR DBT.

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: September 10, 2024

Opposition Filed: September 16, 2024 - not timely

Cause: 11 U.S.C. § 1307(c)(6) - Plan Delinquency; failure to provide documents; failure to confirm plan

Best Interests of Creditors/Estate: Dismiss

Attorney Anh Nguyen, is ordered to appear at the hearing on September 24, 2024, at 9:00 a.m. Appearance may be made via Courtcall or Zoom.

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. Payments under the plan are delinquent in the amount of \$16,707.00 with one payment(s) of \$19,707.00 due prior to the hearing on this motion.

The trustee also moves for dismissal as the debtor has failed to: (1) provide documents required under 11 U.S.C. § 521 and business documents requested by the trustee; and (2) file a motion to confirm the current Chapter 13 Plan. Each of these bases represents unreasonable delay and prejudice to creditors.

UNTIMELY OPPOSITION - MOTION TO MODIFY

Opposition to a motion noticed under LBR 9014-1(f)(1) is due 14 days prior to the hearing. LBR 9014-1(f)(1)(B). Since this opposition is late, the court gives it no weight.

On September 16, 2024, the debtor filed an opposition to the motion to dismiss, ECF No. 31. The opposition consists of an unsworn statement by debtor's counsel, *id.* Counsel states without evidence that documents were provided to the trustee, and that an amended plan and motion to confirm have been filed. Notably, no reasons for the late opposition were presented, and no request for an enlargement of time to oppose the motion was made. Fed. R. Bankr. P. 9006(b).

The court notes that the debtor filed a Modified Chapter 13 plan, ECF No. 38, and a motion to confirm the modified plan, ECF No. 35, on September 16, 2024, which is 8 days prior to the hearing on the

motion to dismiss. The modified plan is set for hearing on November 5, 2024; it is offered as opposition to the motion to dismiss.

Opposition to a motion noticed under LBR 9014-1(f)(1) is due 14 days prior to the hearing. LBR 9014-1(f)(1)(B). Since this opposition--albeit of the de facto variety--is late, it will not be considered in ruling on the motion to dismiss.

The court is aware that the motion to dismiss was filed August 27, 2024, giving the debtor 14 days to resolve the grounds for dismissal or to file a motion to modify. To such an argument there are two responses. First, the Chapter 13 trustee's motion complies with the applicable provisions of national and local rules. Absent a different time specified by the rules or by court order, Rule 9006(d) allows any motion to be heard on 7 days notice. Local rules for the Eastern District Bankruptcy Court have enlarged that period for fully noticed motions to 28 days. And the trustee has availed himself of that rule. Second, and moreover, if the debtor believes that additional time to oppose the motion is required, even if by presentation of a modified plan, it is incumbent on the debtor prior to the date opposition to the motion is due to seek leave to file a late opposition, LBR 9014-1(f), or to seek a continuance of the hearing date on the motion to dismiss. Such a motion must include a showing of cause (including due diligence). LBR 9014-1(j). No such orders were sought here.

Trustee Request to Withdraw Motion

On September 17, 2024, the Chapter 13 trustee filed a request to withdraw his motion. Fed. R. Civ. P. 41. Rule 41 requires leave of court to withdraw the motion after a party has appeared in opposition to the motion. The debtor filed opposition, albeit late, as the court has previously discussed in this ruling.

The court denies the trustee's request to dismiss or withdraw the motion. The parties shall appear at the hearing on the motion.

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.

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 this chapter 13 case has been presented to the court. Having considered the motion together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the motion is granted because of the delinquency under the chapter 13 plan in this case, as well as the debtor's failure to provide business documents or to file a motion to confirm a plan. The court hereby dismisses this case.

9. [23-22129](#)-A-13 **IN RE: HERMINIO/JOAN BERNAS**
[MMM-1](#)

MOTION TO INCUR DEBT
9-3-2024 [[26](#)]

MOHAMMAD MOKARRAM/ATTY. FOR DBT.

No Ruling

10. [24-22629](#)-A-13 **IN RE: RUMMY SANDHU**
[PGM-1](#)

MOTION TO VALUE COLLATERAL OF JPMORGAN CHASE NATIONAL
CORPORATE SERVICES INC.
8-27-2024 [[36](#)]

PETER MACALUSO/ATTY. FOR DBT.

Final Ruling

Motion: Value Collateral [Real Property; Principal Residence]

Disposition: Denied

Order: Civil Minute Order

Subject: 130 Trident Court, Vallejo, California

Value: \$525,000

First Deed of Trust: \$522,528.63; Wells Fargo Bank, N.A.

Equity: \$2,471.37

The debtor seeks an order valuing the collateral of JP Morgan Chase National Corporate Service, Inc., under 11 U.S.C. § 506(a). The balance on JP Morgan Chase's note, which is secured by a deed of trust on the debtor's residence, is \$106,492.00. The motion will be denied as follows.

DEED OF TRUST LIENSTRIPPING

Chapter 13 debtors may strip off a wholly unsecured junior lien encumbering the debtor's principal residence. 11 U.S.C. §§ 506(a), 1322(b)(2); *In re Lam*, 211 B.R. 36, 40-42 (B.A.P. 9th Cir. 1997); *In re Zimmer*, 313 F.3d 1220, 1222-25 (9th Cir. 2002). A motion to value the debtor's principal residence should be granted upon a threefold showing by the moving party. First, the moving party must proceed by noticed motion. Fed. R. Bankr. P. 3012. Second, the motion must be served on the holder of the secured claim. Fed. R. Bankr. P. 3012, 9014(a); LBR 3015-1(j). Third, the moving party must prove by admissible evidence that the debt secured by liens senior to the responding party's claim exceeds the value of the principal residence. 11 U.S.C. § 506(a); *Lam*, 211 B.R. at 40-42; *Zimmer*, 313 F.3d at 1222-25.

APPLICATION

The subject property is the debtor's residence. Petition, ECF No. 1. Declaration of Rummy Sandhu, 2:7-8, ECF No. 38.

The debtor contends the value of the subject property is \$525,000. Amended Schedule A/B, ECF No. 33, Declaration of Rummy Sandhu, 1:25-27, ECF No. 38.

The holder of the note secured by the first deed of trust is Wells Fargo Bank, N.A. Wells Fargo has filed a claim which shows the balance of the note owed to Wells Fargo as of the petition date is \$522,528.63. Claim No. 7. The debtor acknowledges the balance due on the Wells Fargo note. Declaration of Rummy Sandhu, 1:24-25, ECF No. 38.

The debtor provides for the claim of JP Morgan Chase National Corporate Service, Inc., holder of the note and second deed of trust in Class 2(C) of the proposed Chapter 13 Plan. In the plan the debtor indicates that the value of the secured claim is \$0. Chapter 13 Plan, § 3.08, ECF No. 13.

In her motion the debtor contends that there is *negative equity* of \$2,471.37 in the subject property. Motion to Value Collateral, 2:14-16, ECF No. 36. The debtor's calculation of negative equity is incorrect. *After subtracting the amount of the Wells Fargo note from the debtor's value of the subject property the court finds that there is equity of \$2,471.37 to which the deed of trust of JP Morgan Chase attaches.*

Accordingly, the court finds that the claim of JP Morgan Chase is not wholly unsecured. As such JP Morgan Chase's lien may not be valued and later stripped upon completion of the Chapter 13 Plan.

Trustee Opposition

The Chapter 13 trustee opposes the motion stating:

The Motion seeks to value the countertops at \$4,271.37, but the proposed Plan shows the value at \$0.00 in Class 2C. The plan does not appear to be adequately funded to pay the countertops at a value higher than \$0.00.

Opposition, 1:27-28, ECF No. 63.

The court does not understand the reference to countertops, or the dollar amount referenced, in the trustee's opposition. Moreover, the court notes that the opposition incorrectly lists the time and place of the hearing on this motion in the heading. It appears to the court that the opposition was filed erroneously in this matter.

The court will deny the motion as it seeks to value real property collateral that is the moving party's principal residence. The motion and supporting declaration do not contain facts sufficient to show that the respondent creditor's lien is *wholly* unsecured. Thus, the motion does not sufficiently demonstrate an entitlement to the relief requested. See LBR 9014-1(d) (7).

CIVIL MINUTE ORDER

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

Debtor's Motion to Value Collateral has been presented to the court. Having considered the motion together with papers filed in support and opposition, and having heard the arguments of counsel, if any, IT IS ORDERED that the motion is denied.

11. [24-22629](#)-A-13 **IN RE: RUMMY SANDHU**
[PGM-2](#)

MOTION TO AVOID LIEN OF AMERICAN EXPRESS TRAVEL RELATED SERVICES
8-27-2024 [\[43\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Final Ruling

Motion: Avoid Lien that Impairs Exemption
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Granted
Order: Prepared by moving party

Subject: 130 Trident Court, Vallejo, California

Judicial Lien Avoided: \$ 14,566.33 - American Express Travel Related Services

All Other Liens:

- First Deed of Trust - \$522,528.63; Wells Fargo Bank, N.A.
- Second Deed of Trust - \$106,492; JP Morgan Chase

Exemption: \$585,000

Value of Property: \$525,000

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 avoiding the judicial lien of American Express Travel Related Services under 11 U.S.C. § 522(f).

LIEN-AVOIDANCE STANDARDS

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the

property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

REVERSE-PRIORITY ANALYSIS

In cases in which there are multiple liens to be avoided, the liens must be avoided in the reverse order of their priority. See *In re Meyer*, 373 B.R. 84, 87-88 (B.A.P. 9th Cir. 2007). "[L]iens already avoided are excluded from the exemption-impairment calculation with respect to other liens." *Id.*; 11 U.S.C § 522(f)(2)(B).

The liens against the subject real property, listed in the reverse order of their priority are: (i) \$3,966.07 - Capital One Bank (USA), N.A., and (ii) \$14,566.33 - American Express Travel Related Services. The court takes judicial notice of other motions on this calendar that request avoidance of other judicial liens against the subject real property in this matter. Fed. R. Evid. 201. The debtor has claimed a \$585,000 exemption in the property.

Excluding all liens against the subject real property that are lower in priority than respondent's lien, the moving party is entitled to relief. The total of the judicial lien, all other liens except junior judicial liens, plus the exemption amount equals approximately \$1,228,586.96. The value of the property is \$585,000. The respondent's judicial lien, all other liens (except junior judicial liens), and the exemption amount together exceed the property's value by an amount greater than or equal to the judicial lien. As a result, the respondent's judicial lien will be avoided entirely.

12. [24-22629](#)-A-13 **IN RE: RUMMY SANDHU**
[PGM-3](#)

MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), N.A.
8-27-2024 [\[50\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

Subject: 130 Trident Court, Vallejo, California

Judicial Lien Avoided: \$3,966.07 - Capital One Bank (USA), N.A.

All Other Liens:

- First Deed of Trust - \$522,528.63; Wells Fargo Bank, N.A.
- Second Deed of Trust - \$106,492; JP Morgan Chase
- Judicial Lien \$14,566.33 - American Express Travel Related Services

Exemption: \$585,000

Value of Property: \$525,000

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 avoiding the judicial lien of Capital One Bank (USA), N.A. under 11 U.S.C. § 522(f).

LIEN-AVOIDANCE STANDARDS

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption

that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

REVERSE-PRIORITY ANALYSIS

In cases in which there are multiple liens to be avoided, the liens must be avoided in the reverse order of their priority. See *In re Meyer*, 373 B.R. 84, 87-88 (B.A.P. 9th Cir. 2007). "[L]iens already avoided are excluded from the exemption-impairment calculation with respect to other liens." *Id.*; 11 U.S.C § 522(f)(2)(B).

The liens against the subject real property, listed in the reverse order of their priority are: (i) \$3,966.07 - Capital One Bank (USA), N.A., and (ii) \$14,566.33 - American Express Travel Related Services. The court takes judicial notice of other motions on this calendar that request avoidance of other judicial liens against the subject real property in this matter. Fed. R. Evid. 201. The debtor has claimed a \$585,000 exemption in the property.

Excluding all liens against the subject real property that are lower in priority than respondent's lien, the moving party is entitled to relief. The total of the judicial lien, all other liens except junior judicial liens, plus the exemption amount equals approximately \$1,232,553.03. The value of the property is \$585,000. The respondent's judicial lien, all other liens (except junior judicial liens), and the exemption amount together exceed the property's value by an amount greater than or equal to the judicial lien. As a result, the respondent's judicial lien will be avoided entirely.

13. [24-23131](#)-A-13 **IN RE: MULUGETA/DEBBIE ATSAHA**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
8-28-2024 [[16](#)]

SCOTT SHUMAKER/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 November 5, 2024, at 9:00 a.m.

Order: Civil minute order

The Chapter 13 trustee objects to confirmation of the debtor(s) plan.

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 will continue the hearing on this objection to allow the parties to augment the evidentiary record.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on this objection will be continued to November 5, 2024, at 9:00 a.m. The court may rule in this matter without further hearing.

IT IS FURTHER ORDERED that the debtor(s) shall do one of the following:

(A) File a Statement of No Opposition. If the debtor(s) agree that the Chapter 13 trustee's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than October 8, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection not later than October 8, 2024; the response shall specifically address each issue raised in the trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than October 22, 2024. The evidentiary record will close after October 22, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the Chapter 13 trustee's objection by filing a modified plan, not later than October 8, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan.

IT IS FURTHER ORDERED that if the parties resolve the trustee's objection, and there are no additional objections to confirmation pending, then the debtor(s) may submit an order confirming the plan which has been signed by the Chapter 13 trustee. The trustee's signature on the order confirming plan represents to the court that no further objections to confirmation of the proposed plan are pending.

14. [24-22932](#)-A-13 **IN RE: KENNETH MURRAY**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
8-21-2024 [[16](#)]

PATRICIA WILSON/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 November 5, 2024, at 9:00 a.m.

Order: Civil minute order

The Chapter 13 trustee objects to confirmation of the debtor(s) plan.

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 will continue the hearing on this objection to allow the parties to augment the evidentiary record.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on this objection will be continued to November 5, 2024, at 9:00 a.m. The court may rule in this matter without further hearing.

IT IS FURTHER ORDERED that the debtor(s) shall do one of the following:

(A) File a Statement of No Opposition. If the debtor(s) agree that the Chapter 13 trustee's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than October 8, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection not later than October 8, 2024; the response shall specifically address each issue raised in the trustee's objection to confirmation, state whether the issue is

disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than October 22, 2024. The evidentiary record will close after October 22, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the Chapter 13 trustee's objection by filing a modified plan, not later than October 8, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan.

IT IS FURTHER ORDERED that if the parties resolve the trustee's objection, and there are no additional objections to confirmation pending, then the debtor(s) may submit an order confirming the plan which has been signed by the Chapter 13 trustee. The trustee's signature on the order confirming plan represents to the court that no further objections to confirmation of the proposed plan are pending.

15. [24-22634](#)-A-13 **IN RE: SUHMER FRYER**

MOTION TO CONFIRM PLAN
8-16-2024 [\[41\]](#)

SUHMER FRYER/ATTY. FOR MV.

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied without prejudice

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).

SERVICE OF MOTION

(e) Service and Proof of Service.

- 1) Service of all pleadings and documents filed in support of, or in opposition to, a motion shall be

made on or before the date they are filed with the Court.

- 2) *A proof of service, in the form of a certificate of service, shall be filed with the Clerk concurrently with the pleadings or documents served, or not more than three (3) days after they are filed.*
- 3) 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.

LR 9014-1(e) (emphasis added).

A certificate of service has not been filed as required by LBR 9014-1. Thus, the court cannot determine if the proper parties have been served under Fed. R. Bankr. P. 9014.

Because service was insufficient, the motion will be denied without prejudice.

CIVIL MINUTE ORDER

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

The debtor's motion to dismiss 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.

16. [24-22634](#)-A-13 **IN RE: SUHMER FRYER**
[KMM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY NEWREZ LLC
8-29-2024 [[52](#)]

KIRSTEN MARTINEZ/ATTY. FOR MV.

Final Ruling

Objection: Creditor's Objection to Confirmation of Plan

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

Disposition: Overruled as moot

Order: Civil minute order

Creditor, NewRez, LLC, objects to confirmation of the debtor(s) plan.

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 debtor has filed multiple Chapter 13 Plans. See Chapter 13 Plan, ECF No. 26, 32, 42. The objection fails to identify the plan to which the creditor objects. However, it appears to the court that the creditor objects to the plan which is the subject of the debtor's motion to confirm, heard concurrently on this calendar. The court has denied the debtor's motion to confirm plan and a further motion to confirm must be filed, served, and set for hearing. Accordingly, the court will overrule this objection to confirmation as moot.

CIVIL MINUTE ORDER

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

NewRez LLC's objection to confirmation has been presented to the court. Having considered the objection together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the objection is overruled as moot.

17. [24-22935](#)-A-13 **IN RE: STEVEN MAJOURAU**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
8-21-2024 [[29](#)]

SCOTT JOHNSON/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 November 5, 2024, at 9:00 a.m.

Order: Civil minute order

The Chapter 13 trustee objects to confirmation of the debtor(s) plan.

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 will continue the hearing on this objection to allow the parties to augment the evidentiary record.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on this objection will be continued to November 5, 2024, at 9:00 a.m. The court may rule in this matter without further hearing.

IT IS FURTHER ORDERED that the debtor(s) shall do one of the following:

(A) File a Statement of No Opposition. If the debtor(s) agree that the Chapter 13 trustee's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than October 8, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection not later than October 8, 2024; the response shall specifically address each issue raised in the trustee's objection to confirmation, state whether the issue is

disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than October 22, 2024. The evidentiary record will close after October 22, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the Chapter 13 trustee's objection by filing a modified plan, not later than October 8, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan.

IT IS FURTHER ORDERED that if the parties resolve the trustee's objection, and there are no additional objections to confirmation pending, then the debtor(s) may submit an order confirming the plan which has been signed by the Chapter 13 trustee. The trustee's signature on the order confirming plan represents to the court that no further objections to confirmation of the proposed plan are pending.

18. [24-22935](#)-A-13 **IN RE: STEVEN MAJOURAU**
[RDW-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY STEPHEN WARD AND DEBRA WARD, CO-TRUSTEES UNDER THE WARD FAMILY LIVING TRUST, DOUGLAS RENNER AND SHELLEY RENNER, TRUSTEES OF THE DOUGLAS AND SHELLEY RENNER REVOCABLE TRUST, PHILIP BRYANT AND KIM BRYANT
8-19-2024 [\[26\]](#)

SCOTT JOHNSON/ATTY. FOR DBT.
REILLY WILKINSON/ATTY. FOR MV.

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 November 5, 2024, at 9:00 a.m.

Order: Civil minute order

The Chapter 13 trustee objects to confirmation of the debtor(s) plan.

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 will continue the hearing on this objection to allow the parties to augment the evidentiary record.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on this objection will be continued to November 5, 2024, at 9:00 a.m. The court may rule in this matter without further hearing.

IT IS FURTHER ORDERED that the debtor(s) shall do one of the following:

(A) File a Statement of No Opposition. If the debtor(s) agree that the Chapter 13 trustee's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than October 8, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection not later than October 8, 2024; the response shall specifically address each issue raised in the trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than October 22, 2024. The evidentiary record will close after October 22, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the Chapter 13 trustee's objection by filing a modified plan, not later than October 8, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan.

IT IS FURTHER ORDERED that if the parties resolve the trustee's objection, and there are no additional objections to confirmation pending, then the debtor(s) may submit an order confirming the plan which has been signed by the Chapter 13 trustee. The trustee's signature on the order confirming plan represents to the court that no further objections to confirmation of the proposed plan are pending.

19. [24-22437](#)-A-13 **IN RE: ROBERT STANLEY**
[DPC-1](#)

CONTINUED AMENDED OBJECTION TO CONFIRMATION OF PLAN BY DAVID
P. CUSICK
7-19-2024 [\[22\]](#)

MARY TERRANELLA/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan
Notice: Continued from August 13, 2024
Disposition: Overruled
Order: Civil minute order

The hearing on the Chapter 13 trustee's objection to confirmation was continued to allow the parties to augment the evidentiary record. The debtor(s) filed opposition as ordered and the trustee filed a reply.

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 trustee indicates in his reply that the issues raised in the objection to confirmation have been resolved and that payments are current under the plan. Reply, ECF No. 42. Finally, the trustee requests that his objection be overruled.

Accordingly, the court will overrule the objection.

CIVIL MINUTE ORDER

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

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

The 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 overruled.

20. [24-22437](#)-A-13 **IN RE: ROBERT STANLEY**
[JCW-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY NATIONSTAR
MORTGAGE LLC
7-16-2024 [\[14\]](#)

MARY TERRANELLA/ATTY. FOR DBT.
JENNIFER WONG/ATTY. FOR MV.
RESPONSIVE PLEADING

Tentative Ruling

Objection: Creditor's Objection to Confirmation of Plan

Notice: Continued from August 13, 2024

Disposition: Overruled

Order: Civil minute order

The hearing on the Nationstar Mortgage, LLC's objection to confirmation was continued to allow the parties to augment the evidentiary record. The debtor(s) filed opposition as ordered and has attached a proposed order confirming the plan which has been signed by the creditor. In the future counsel is reminded that the Chapter 13 trustee's signature is required on all stipulations and proposed orders.

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 creditor objects contending the obligation owed on its secured claim is misclassified in the proposed plan in Class 4. The debtor opposes the objection stating that the obligation is owed by the debtor and his mother, and the obligation is paid by his mother on her mortgage. Debtor does not reside in the property secured by the note and deed of trust held by the objecting creditor. The parties have reached in agreement regarding the classification of the claim and the creditor has signed a proposed order confirming the plan.

As such, and absent any opposition by the Chapter 13 trustee, the court finds that in this instance classification of the obligation in Class 4 is proper.

Accordingly, the court will overrule the objection. The debtor(s) shall submit an order confirming the plan which has been approved by the Chapter 13 trustee.

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.

Nationstar Mortgage, LLC'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 overruled.

21. [24-21038](#)-A-13 **IN RE: PERFECTO GUADIANA**
[MOH-2](#)

OBJECTION TO CLAIM OF HSBC BANK USA N.A., CLAIM NUMBER 2
8-20-2024 [\[39\]](#)

MICHAEL HAYS/ATTY. FOR DBT.

Final Ruling

Objection: Claim

Disposition: Overruled without prejudice

Order: Civil minute order

The debtor objects to the claim of HSBC Bank USA, N.A. The objection will be overruled without prejudice as follows.

INSUFFICIENT NOTICE

(b) Amount of Notice.

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

LBR 3007-1(b)(1).

The notice of motion, ECF No. 40, provides that opposition, if any, shall be in writing and shall be served and filed with the court by the responding party at least fourteen (14) days preceding the date or continued date of the hearing. This is the notice required under LBR 3007-1(b)(1). LBR 3007-1(b)(1) also requires 44 days' notice of any objection requiring written opposition.

The movant has only provided 35 days' notice of the objection. See Proof of Service, ECF No. 43. The objection will be overruled without prejudice.

CIVIL MINUTES ORDER

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

Debtor's Objection to the Claim of HSBC Bank USA, N.A., has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the objection is overruled without prejudice.

22. [24-23052](#)-A-13 **IN RE: SHANE/STACI STEFFEN**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
8-21-2024 [[16](#)]

RABIN POURNAZARIAN/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 November 5, 2024, at 9:00 a.m.

Order: Civil minute order

The Chapter 13 trustee objects to confirmation of the debtor(s) plan.

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 will continue the hearing on this objection to allow the parties to augment the evidentiary record.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on this objection will be continued to November 5, 2024, at 9:00 a.m. The court may rule in this matter without further hearing.

IT IS FURTHER ORDERED that the debtor(s) shall do one of the following:

(A) File a Statement of No Opposition. If the debtor(s) agree that the Chapter 13 trustee's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than October 8, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection not later than October 8, 2024; the response shall specifically address each issue raised in the trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than October 22, 2024. The evidentiary record will close after October 22, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the Chapter 13 trustee's objection by filing a modified plan, not later than October 8, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan.

IT IS FURTHER ORDERED that if the parties resolve the trustee's objection, and there are no additional objections to confirmation pending, then the debtor(s) may submit an order confirming the plan which has been signed by the Chapter 13 trustee. The trustee's signature on the order confirming plan represents to the court that no further objections to confirmation of the proposed plan are pending.

23. [24-20754](#)-A-13 **IN RE: SUSAN OLIVER**
[MOH-2](#)

AMENDED MOTION TO CONFIRM PLAN
8-8-2024 [[75](#)]

MICHAEL HAYS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Continued to November 5, 2024, at 9:00 a.m.

Order: Civil minute order

The debtor seeks confirmation of the Amended Chapter 13 Plan, filed August 8, 2024. The Chapter 13 trustee does not oppose the motion. Secured creditor Global Finance Group, Inc., opposes the motion contending that: (1) the proposed interest rate of 10% on Global's claim is insufficient; (2) the plan is not proposed in good faith; and (3) the plan is not feasible.

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).

Global's opposition is not accompanied by any evidence regarding the interest rate proposed. Neither the debtor's declaration in support of the motion, nor her response to the opposition contain any admissible evidence regarding the type of business the debtor owns and operates. Neither does the most recently filed Schedule A/B identify the type of business the debtor owns and operates. Amended Schedule A/B, ECF No. 43.

Declarations in support of, or in opposition to, previous motions will not be considered in the court's ruling on this motion.

The court will continue this motion once to allow the parties to augment the evidentiary record. All evidence filed shall reference docket control number MOH-2. The court may rule on this matter without further notice or hearing.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on this motion will be continued to November 5, 2024, at 9:00 a.m. The court may rule in this matter

without further hearing. Additional pleadings filed by any party shall contain docket control number MOH-2.

IT IS FURTHER ORDERED that the opposing creditor shall file and serve any evidence or argument in support of its position no later than October 8, 2024.

IT IS FURTHER ORDERED that the debtor shall file and serve any evidence or argument in support of her motion no later than October 22, 2024.

IT IS FURTHER ORDERED that the Chapter 13 trustee shall file and serve a statement of position no later than October 29, 2024.

24. [23-20257](#)-A-13 **IN RE: AUSTIN MERRITT**
[TLA-3](#)

CONTINUED MOTION TO MODIFY PLAN
6-24-2024 [\[99\]](#)

THOMAS AMBERG/ATTY. FOR DBT.

Final Ruling

Motion: Modify Chapter 13 Plan

Notice: Continued from July 30, 2024

Disposition: Granted

Order: Prepared by movant, approved by the trustee

Subject: Second Modified Chapter 13 Plan, filed June 24, 2024

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(s) seek approval of the proposed modified Chapter 13 Plan. The hearing on this matter was continued to allow the debtors to obtain a loan modification consistent with the plan terms and to provide evidence in response to the Chapter 13 trustee's opposition.

On September 10, 2024, the court granted the motion to modify the loan.

On September 9, 2024, the Chapter 13 trustee filed a reply, ECF No. 123. In his reply the trustee states that he no longer opposes the motion. Accordingly, 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.

25. [24-22457](#)-A-13 **IN RE: HELMUTH/ANGELA BURROWS**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.
CUSICK
7-24-2024 [\[33\]](#)

RABIN POURNAZARIAN/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Objection: Trustee’s Objection to Confirmation of Plan

Notice: Continued from August 13, 2024

Disposition: Overruled

Order: Civil minute order

The hearing on the Chapter 13 trustee’s objection to confirmation was continued to allow the parties to augment the evidentiary record. The debtor(s) filed opposition as ordered and the trustee filed a reply.

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 trustee indicates in his reply that the issues raised in the objection to confirmation have been resolved and that payments are current under the plan. Reply, ECF No. 56. Finally, the trustee requests that his objection be overruled.

Accordingly, the court will overrule the objection. The debtor(s) shall submit an order confirming the plan which has been approved by the Chapter 13 trustee.

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 overruled.

26. [21-22861](#)-A-13 **IN RE: MEGAN EKOMAYE**
[DPC-3](#)

CONTINUED MOTION TO DISMISS CASE
7-17-2024 [\[84\]](#)

CHAD JOHNSON/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

Notice: Continued from August 27, 2024

Disposition: Denied

Order: Civil minute order

The hearing on this matter was continued to allow the parties to augment the record if necessary. On September 10, 2024, the Chapter 13 filed a status report stating that he no longer wishes to pursue his motion and that plan payments were current. Status Report, ECF No. 94. The trustee requests that the court deny the motion.

Accordingly, the motion will be denied.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the motion to dismiss is denied.

27. [24-22275](#)-A-13 **IN RE: AARON LAURANT**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.
CUSICK
7-17-2024 [\[18\]](#)

MUOI CHEA/ATTY. FOR DBT.

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: Continued from August 13, 2024

Disposition: Overruled

Order: Civil minute order

The hearing on the Chapter 13 trustee's objection to confirmation was continued to allow the parties to augment the evidentiary record. The debtor(s) filed opposition as ordered and the trustee filed a reply.

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 trustee filed a status report, ECF No. 27. The trustee states that the issues raised in the objection to confirmation have been resolved. He also states the plan payments are current, and that the plan is feasible given the claims which have been filed. Finally, the trustee requests that his objection be overruled.

Accordingly, the court will overrule the objection. The debtor(s) shall submit an order confirming the plan which has been approved by the Chapter 13 trustee.

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 overruled.

28. [24-22775](#)-A-13 **IN RE: EVELYN DOMONDON**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
8-30-2024 [\[44\]](#)

Final Ruling

This case was dismissed on September 16, 2024. Accordingly, the order to show cause will be removed from the calendar as moot. No appearances are required.

29. [24-23175](#)-A-13 **IN RE: DAVID FRIAS**
[AP-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY JPMORGAN CHASE BANK,
NATIONAL ASSOCIATION
8-13-2024 [\[14\]](#)

CHAD JOHNSON/ATTY. FOR DBT.
WENDY LOCKE/ATTY. FOR MV.

Final Ruling

Objection: Creditor's Objection to Confirmation of Plan

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

Disposition: Continued to November 5, 2024, at 9:00 a.m.

Order: Civil minute order

Creditor, JP Morgan Chase Bank, N.A., objects to confirmation of the debtor(s) plan.

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 will continue the hearing on this objection to allow the parties to augment the evidentiary record.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on this objection will be continued to November 5, 2024, at 9:00 a.m. The court may rule in this matter without further hearing.

IT IS FURTHER ORDERED that the debtor(s) shall do one of the following:

(A) File a Statement of No Opposition. If the debtor(s) agree that the creditor's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than October 8, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagrees with the creditor's objection, the debtor(s) shall file and serve a written response to the objection not later than October 8, 2024; the response shall specifically address each issue raised in the creditor's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the creditor shall file and serve a reply, if any, no later than October 22, 2024. The evidentiary record will close after October 22, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the creditor's objection by filing a modified plan, not later than October 8, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan.

IT IS FURTHER ORDERED that any stipulation between the parties resolving this matter must be approved and signed by the Chapter 13 trustee prior to filing with the court. The trustee's signature on the stipulation warrants that the terms of the proposed stipulation do not impact the plan's compliance with 11 U.S.C. § 1325(a).

30. [24-23175](#)-A-13 **IN RE: DAVID FRIAS**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
8-28-2024 [[19](#)]

CHAD JOHNSON/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 November 5, 2024, at 9:00 a.m.

Order: Civil minute order

The Chapter 13 trustee objects to confirmation of the debtor(s) plan.

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 will continue the hearing on this objection to allow the parties to augment the evidentiary record.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on this objection will be continued to November 5, 2024, at 9:00 a.m. The court may rule in this matter without further hearing.

IT IS FURTHER ORDERED that the debtor(s) shall do one of the following:

(A) File a Statement of No Opposition. If the debtor(s) agree that the Chapter 13 trustee's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than October 8, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection not later than October 8, 2024; the response shall specifically address each issue raised in the trustee's objection to confirmation, state whether the issue is

disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than October 22, 2024. The evidentiary record will close after October 22, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the Chapter 13 trustee's objection by filing a modified plan, not later than October 8, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan.

IT IS FURTHER ORDERED that if the parties resolve the trustee's objection, and there are no additional objections to confirmation pending, then the debtor(s) may submit an order confirming the plan which has been signed by the Chapter 13 trustee. The trustee's signature on the order confirming plan represents to the court that no further objections to confirmation of the proposed plan are pending.

31. [24-22381](#)-A-13 **IN RE: TERI HUMPHREY**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.
CUSICK
7-17-2024 [[14](#)]

JOCELYN GODINHO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan
Notice: Continued from August 13, 2024
Disposition: Overruled
Order: Civil minute order

The hearing on the Chapter 13 trustee's objection to confirmation was continued to allow the parties to augment the evidentiary record. The debtor(s) filed opposition as ordered and the trustee filed a reply.

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 trustee indicates in his reply that the issues raised in the objection to confirmation have been resolved and that payments are

current under the plan. Reply, ECF No. 30. Finally, the trustee requests that his objection be overruled.

Accordingly, the court will overrule the objection. The debtor(s) shall submit an order confirming the plan which has been approved by the Chapter 13 trustee.

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 overruled.

32. [24-22983](#)-A-13 **IN RE: AMELIA ALLEN**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
8-21-2024 [[30](#)]

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 November 5, 2024, at 9:00 a.m.

Order: Civil minute order

The Chapter 13 trustee objects to confirmation of the debtor(s) plan.

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 will continue the hearing on this objection to allow the parties to augment the evidentiary record.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on this objection will be continued to November 5, 2024, at 9:00 a.m. The court may rule in this matter without further hearing.

IT IS FURTHER ORDERED that the debtor(s) shall do one of the following:

(A) File a Statement of No Opposition. If the debtor(s) agree that the Chapter 13 trustee's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than October 8, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection not later than October 8, 2024; the response shall specifically address each issue raised in the trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than October 22, 2024. The evidentiary record will close after October 22, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the Chapter 13 trustee's objection by filing a modified plan, not later than October 8, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan.

IT IS FURTHER ORDERED that if the parties resolve the trustee's objection, and there are no additional objections to confirmation pending, then the debtor(s) may submit an order confirming the plan which has been signed by the Chapter 13 trustee. The trustee's signature on the order confirming plan represents to the court that no further objections to confirmation of the proposed plan are pending.

33. [24-22485](#)-A-13 **IN RE: RICARDO VEGA**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.
CUSICK
7-24-2024 [\[21\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: Continued from August 13, 2024

Disposition: Sustained and confirmation denied

Order: Civil minute order

The hearing on the Chapter 13 trustee's objection to confirmation was continued to allow the parties to augment the evidentiary record. Both the trustee and the debtor have filed additional evidence and argument as ordered.

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 trustee's initial objection contended that the debtor had failed to provide business documents as requested to the trustee. The trustee filed a reply on September 10, 2024, which indicated that all issues raised in his objection had been resolved save one. The remaining issue arises from the documents which the debtor provided to the trustee. The debtor has failed to show proof that the alcohol license, required to operate his restaurant business, is current. Without a current license the sale of alcohol at the debtor's place of business would be illegal.

Debtor Reply

On September 17, 2024, the debtor filed a declaration and submitted an exhibit in support of plan confirmation. For the following reasons the court finds that the debtor has failed to meet the burden of proving that the plan satisfies the feasibility requirement of 11 U.S.C. § 1325(a)(6).

If the debtor does not hold a current license authorizing the legal sale of alcohol at his business, then the plan is not feasible.

The exhibit, which appears to be a printout of a document from the California Department of Alcoholic Beverage Control is not legible. Even after increasing the document size the court is unable to determine from the document whether the required renewal fees have been paid by the debtor and whether the license is current. Exhibit A, ECF 41.

Similarly, the declaration of the debtor fails to provide evidence which proves the debtor renewed the license. The declaration states:

I have attached to this declaration, a true and complete copy of the Alcoholic Beverage Control ("ABC") licence, (sic) reported on Monday September 16, 2024, which reports to "Allow up to six weeks for expiration date updates after renewal fee submittal. See attached Exhibit A.

Declaration of Ricardo M. Vega, 1:21-25, ECF No. 40.

The declaration does not state: (1) if the debtor paid the required renewal fee; (2) when the fee was paid; or (3) the amount and manner of payment. Neither does the debtor attach any exhibit which proves he tendered the required payment. As such the debtor has failed to prove the plan is feasible.

Accordingly, the court will sustain the objection.

CIVIL MINUTE ORDER

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

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

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

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

34. [24-22193](#)-A-13 **IN RE: KENNETH WILKINSON**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
8-26-2024 [\[44\]](#)

Final Ruling

This case was dismissed on September 16, 2024. Accordingly, the order to show cause is removed from the calendar as moot. No appearances are required.

35. [23-23697](#)-A-13 **IN RE: SAM/CHREB ROS**
[MMM-2](#)

MOTION TO CONFIRM PLAN
8-10-2024 [\[65\]](#)

MOHAMMAD MOKARRAM/ATTY. FOR DBT.
CREDITOR NON-OPPOSITION

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

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

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

Land Home Financial Services, Inc. (Claim No. 23) opposes confirmation, contending that as residential home mortgage payments were delinquent on the date of the petition that classification of that claim in Class 4 (direct payment) is improper.

Section 1325(a)(5) prescribes the treatment of an allowed secured claim provided for by the plan. This treatment must satisfy one of three alternatives described in paragraph (5) of § 1325(a). In summary, these mandatory alternatives are: (1) the secured claim holder's acceptance of the plan; (2) the plan's providing for both (a) lien retention by the secured claim holder and (b) payment distributions on account of the secured claim having a present value "not less than the allowed amount of such claim"; or (3) the plan's providing for surrender of the collateral to the secured claim holder. See 11 U.S.C. § 1325(a)(5).

In most instances, the validity and amount of a secured debt is determined by state, not federal, law. 11 U.S.C. § 502(b)(1), §1322(e) ("the amount necessary to cure the default, shall be determined in accordance with the underlying agreement and applicable nonbankruptcy law"). Where, as here, the claim arises from a secured claim against the debtor's residence the "allowed amount of the secured claim" will be determined by the underlying note and deed of trust. A creditor expresses that "allowed amount" by filing a Proof of Claim; absent objection, the amount stated in the Proof of Claim, including the amount of the ongoing mortgage payment and any arrearage, is "deemed" allowed. 11 U.S.C. § 502(a).

Here, the plan places the secured creditor's claim in Class 4, yet the claim is in default and includes a pre-petition arrearage in the amount of \$3,550.06. Compare Claim No. 23 (reflecting delinquency) with 11 U.S.C. 502(a) (deemed allowance). The court also notes that the debtors have not objected to the claim.

Two principles control this analysis. First, Chapter 13 debtors do not have an absolute right to make payments to unimpaired claims directly to the creditor effected. *In re Giesbrecht*, 429 B.R. 682, 685-86 (B.A.P. 9th Cir. 2010); *Cohen v. Lopez (In re Lopez)*, 372 B.R. 40 (9th Cir. BAP 2007), aff'd, and adopted by *Cohen v. Lopez (In re Lopez)*, 550 F.3d 1202 (9th Cir.2008) ("a debtor has no absolute right to make such [direct] payments"). The decision to allow, or to not allow, a Chapter 13 payments directly has always been discretionary. *Giesbrecht*, 429 B.R. at 690.

Thus, bankruptcy courts have been afforded the discretion to make the determination of when direct payments may or may not be appropriate based upon the confirmation requirements of § 1325, policy reasons, and the factors set forth by case law, local rules or guidelines. *Lopez*, 372 B.R. at 46-47 ("Reflecting the discretion granted by the Code, different courts and different circuits have different rules on the permissibility of direct payment, a fact unchanged by or since [*Fulkrod v. Barmettler (In*

re Fulkrod), 126 B.R. 584 (9th Cir. BAP 1991) *aff'd sub. nom., Fulkrod v. Savage (In re Fulkrod)*, 973 F.2d 801 (9th Cir.1992)].")

In re Giesbrecht, 429 B.R. at 690 (emphasis added).

Second, at least where a residential mortgage is delinquent on the petition date, merely providing in the plan that the debtor will pay the claim directly does not satisfy § 1325(a)(5). As Judge Lundin commented:

A bald statement that a creditor will be dealt with "outside the plan" fails to satisfy any of the statutory ways in which the Chapter 13 plan can provide for an allowed secured claim under 11 U.S.C. § 1325(a)(5)-- unless the creditor "accepts" being "outside" for whatever it might mean. "Outside" does not preserve the lien of the affected creditor and does not guarantee present value of collateral--rights the secured creditor otherwise has at confirmation under § 1325(a)(5). Placing a secured claim "outside the plan" cannot rescue confirmation of a plan that does not satisfy the confirmation tests for treatment of secured claims.

Keith M. Lundin, *Lundin On Chapter 13*, § 74.8, at ¶ 5.

Argument might be interposed to distinguish the classification problem described by Judge Lundin with respect to § 1325(a)(5) where the residential mortgage is not delinquent on the petition date because as a matter of law those mortgages cannot be modified. 11 U.S.C. § 1322(b)(2), (b)(5), (c)(2) (prohibiting a debtor from modifying a deed of trust applicable to their principal residence, except to cure a delinquency or extending the "last original payment schedule" to a date not later than plan completion).

Moreover, the mandatory form plan in the Eastern District of California Bankruptcy Court specifically contemplates and addresses this eventuality. LBR 3015-1(a). It provides:

Class 1 includes all delinquent secured claims that mature after the completion of this plan, including those secured by Debtor's principal residence.

(a) Cure of defaults. *All arrears on Class 1 claims shall be paid in full by Trustee. The equal monthly installment specified in the table below as the Arrearage dividend shall pay the arrears in full.*

...

(b) Maintaining payments. *Trustee shall maintain all post-petition monthly payments to the holder of each Class 1 claim whether or not this plan is confirmed or a proof of claim is filed.*

Chapter 13 Plan § 3.07, EDC 3-080.

In contrast, Class 4 of the plan for the Eastern District of California contemplates a debtor whose mortgage is fully current on the date the case is filed. It provides:

Class 4 includes all secured claims paid directly by Debtor or third party. Class 4 claims mature after the completion of this plan, are not in default, and are not modified by this plan. These claims shall be paid by Debtor or a third person whether or not a proof of claim is filed[,] or the plan is confirmed.

Id. at § 3.10.

Here, the treatment of the delinquent mortgage in Class 4 (direct payment by the debtor) does not satisfy § 1325(a)(5). See 11 U.S.C. § 1325(a)(5)(B)(ii); *Lundin On Chapter 13* at § 74.8. The creditor has not expressly accepted this treatment in the plan; this court will not infer acceptance from the creditor's silence. 11 U.S.C. § 1325(a)(5)(A); *In re Pardee*, 218 B.R. 916, 939-40 (B.A.P. 9th Cir. 1998), *aff'd*, 193 F.3d 1083 (9th Cir. 1999) (Klein, J. concurring and dissenting) ("[I]mplied acceptance is a troublesome theory that has been largely discredited in all but one application: the formality of acceptance of a chapter 13 plan by a secured creditor whose claim is not being treated in accord with statutory standards may be implied from silence"). In the alternative, the plan does not provide for payment of the allowed amount of the claim, i.e., ongoing mortgage plus the arrearage. 11 U.S.C. § 1325(a)(5)(B). Finally, the plan does not provide for surrender of the collateral. 11 U.S.C. § 1325(a)(5)(C). Moreover, the classification does not comply with the terms of the mandatory form plan for the Eastern District. Plan § 3.07, EDC 03-080; LBR 3015-1(a).

As a result, the plan does not comply with § 1325(a)(5) and will not be confirmed.

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.