

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

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

DAY: TUESDAY
DATE: SEPTEMBER 27, 2022
CALENDAR: 9:00 A.M. CHAPTER 13 CASES

RULINGS

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

"No Ruling" means the likely disposition of the matter will not be disclosed in advance of the hearing. The matter will be called; parties wishing to be heard should rise and be heard.

"Tentative Ruling" means the likely disposition, and the reasons therefor, are set forth herein. The matter will be called. Aggrieved parties or parties for whom written opposition was not required should rise and be heard. Parties favored by the tentative ruling need not appear. Non-appearing parties are advised that the court may adopt a ruling other than that set forth herein without further hearing or notice.

"Final Ruling" means that the matter will be resolved in the manner, and for the reasons, indicated below. The matter will not be called; parties and/or counsel need not appear and will not be heard on the matter.

CHANGES TO PREVIOUSLY PUBLISHED RULINGS

On occasion, the court will change its intended ruling on some of the matters to be called and will republish its rulings. The parties and counsel are advised to recheck the posted rulings after 3:00 p.m. on the next business day prior to the hearing. Any such changed ruling will be preceded by the following bold face text: **"[Since posting its original rulings, the court has changed its intended ruling on this matter]"**.

ERRORS IN RULINGS

Clerical errors of an insignificant nature, e.g., nomenclature ("2017 Honda Accord," rather than "2016 Honda Accord"), amounts, ("\$880," not "\$808"), may be corrected in (1) tentative rulings by appearance at the hearing; or (2) final rulings by appropriate ex parte application. Fed. R. Civ. P. 60(a) *incorporated by* Fed. R. Bankr. P. 9024. All other errors, including those occasioned by mistake, inadvertence, surprise, or excusable neglect, must be corrected by noticed motion. Fed. R. Bankr. P. 60(b), *incorporated by* Fed. R. Bankr. P. 9023.

1. [22-21405](#)-A-13 **IN RE: JENNIFER NEELY**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
9-6-2022 [\[31\]](#)

JUSTIN KUNEY/ATTY. FOR DBT.

Final Ruling

As the installment fees have been paid in full, the order to show cause is discharged. The case will remain pending.

2. [19-21114](#)-A-13 **IN RE: LYNDA STOVALL**
[PGM-5](#)

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

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Approve Refinance

Notice: Continued from August 30, 2022 - written opposition filed by the trustee and secured creditors

Disposition: Granted

Order: Civil minute order

The debtor seeks an order authorizing the refinance of her home mortgages held by HSBC Bank USA, N.A. and The Bank of New York Mellon. Creditors HSBC Bank USA, N.A. and The Bank of New York Mellon have filed limited oppositions to the motion.

The trustee initially opposed the motion arguing that the debtor had failed to file supplemental Schedules I and J, or an estimated closing statement in support of the motion. The debtor filed the missing schedules on August 18, 2022, and subsequently filed the estimated closing statement on August 19, 2022. See ECF No. 123, 126.

The court issued the following order on September 1, 2022:

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

Order, ECF No. 129 (emphasis added).

The hearing on this matter was continued to allow the chapter 13 trustee to review and evaluate the filed evidence, and to provide a statement of his position regarding the proposed refinance.

The trustee has not filed a status report as ordered by the court.

Absent further objection by the trustee or secured creditors at the hearing the court will grant the motion.

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 Approve Refinance has been presented to the court. Having considered the motion, oppositions, and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is granted.

3. [19-23616](#)-A-13 **IN RE: MARK BRASHLEY**
[WW-8](#)

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

MARK WOLFF/ATTY. FOR DBT.

Final Ruling

Motion: Approval of Mortgage Loan Modification

Notice: Continued from August 30, 2022

Disposition: Granted in part, denied in part

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). 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 approving the modification of his mortgage loan. The hearing on this motion was continued to allow the debtor to provide additional information to resolve the trustee's initial opposition to the motion, and for the trustee to evaluate the information provided. The chapter 13 trustee has filed a Status Report, ECF No. 141. In his report the trustee indicates that he

has received sufficient information to resolve his opposition to the motion and that he recommends the court grant the motion.

LOAN MODIFICATION

The court construes the present motion as requesting two forms of relief. First, the motion requests approval of a loan modification agreement. While the ordinary chapter 13 debtor has some of the rights and powers of a trustee under § 363, such a debtor does not have the trustee's right to obtain credit or incur debt under § 364. See 11 U.S.C. § 1303. *But cf.* 11 U.S.C. § 1304 (providing that a chapter 13 debtor engaged in business has the rights and powers of a trustee under § 364). The court's local rules address this situation and require court authorization before a chapter 13 debtor obtains credit or incurs new debt. LBR 3015-1(h)(1)(E).

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

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

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

CIVIL MINUTE ORDER

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

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

The court has reviewed the present motion for approval of a mortgage loan modification agreement between the debtor and the secured creditor named in the motion. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted in part and denied in part. The court authorizes the debtor and the secured creditor to enter into the loan modification agreement subject to the parties' right to reinstatement of the original terms of the loan documents in the event conditions precedent to the loan modification agreement are

not satisfied. The court denies the motion to the extent it requests approval of the terms and conditions of the loan modification or any other declaratory relief. To the extent the modification is inconsistent with the confirmed chapter 13 plan, the debtor shall continue to perform the plan as confirmed until it is modified.

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

4. [22-22120](#)-A-13 **IN RE: DON MARTINEZ**
[MRL-1](#)

MOTION TO VALUE COLLATERAL OF CAPITAL ONE, N.A.
8-27-2022 [\[11\]](#)

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

Final Ruling

Motion: Value Collateral - Motor Vehicle

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

Disposition: Granted

Order: Civil minute order

Subject: 2016 Acura TLX

Value: \$10,000.00

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the respondent is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The debtor seeks an order valuing the collateral of Capital One, N.A., a 2016 Acura TLX vehicle, at \$10,000.00.

VALUATION OF COLLATERAL

Chapter 13 debtors may value collateral by noticed motion. Fed. R. Bankr. P. 3012. Section 506(a) of the Bankruptcy Code provides, "An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property" and is unsecured as to the remainder. 11 U.S.C. § 506(a). For personal property, value is defined as "replacement value" on the date of the petition. *Id.* § 506(a)(2). For "property

acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." *Id.* The costs of sale or marketing may not be deducted. *Id.*

A debtor's ability to value collateral consisting of a motor vehicle is limited by the terms of the hanging paragraph of § 1325(a). See 11 U.S.C. § 1325(a) (hanging paragraph). Under this statute, a lien secured by a motor vehicle cannot be stripped down to the collateral's value if: (i) the lien securing the claim is a purchase money security interest, (ii) the debt was incurred within the 910-day period preceding the date of the petition, and (iii) the motor vehicle was acquired for the debtor's personal use. 11 U.S.C. § 1325(a) (hanging paragraph).

In this case, the debtor seeks to value collateral consisting of a motor vehicle described as a 2016 Acura TLX. The debt secured by the vehicle was not incurred within the 910-day period preceding the date of the petition. The court values the vehicle at \$10,000.00.

CIVIL MINUTE ORDER

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

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

The debtor's motion to value collateral consisting of a motor vehicle has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The personal property collateral described as a 2016 Acura TLX has a value of \$10,000.00. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$10,000.00 equal to the value of the collateral that is unencumbered by senior liens. The respondent has a general unsecured claim for the balance of the claim.

5. [20-20722](#)-A-13 **IN RE: ANTHONY/KAYLA YAZZIE**
[DPC-4](#)

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

PETER MACALUSO/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

Notice: Continued from August 15, 2022

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

Order: Civil minute order

Motion to Modify Plan Filed: September 15, 2022

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the plan. The trustee contends that the debtor is delinquent in the amount of \$3,287.26.

A modified plan has been filed and set for hearing in this case. The scheduled hearing on the modification is November 1, 2022, at 9:00 a.m. The court will continue the hearing on this motion to dismiss to coincide with the hearing on the plan modification. If the modification is disapproved, and the motion to dismiss has not been withdrawn or otherwise resolved, the court may dismiss the case at the continued hearing.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the chapter 13 trustee's motion to dismiss is continued to November 1, 2022, at 9:00 a.m.

IT IS FURTHER ORDERED that if the trustee elects to oppose the debtor's motion to modify, then not later than 14 days prior to the continued hearing date the trustee shall file a status report updating this motion to dismiss. The status report shall provide a concise list explaining the remaining issues in the motion to dismiss and indicate the amount of any plan delinquency. The status report shall be succinct and shall not consist of a cut and paste of the opposition filed by the trustee in response to a motion to amend or modify the debtor's plan.

6. [22-21923](#)-A-13 **IN RE: ANDREW/SHAWNI MILLER**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
9-7-2022 [\[14\]](#)

THOMAS AMBERG/ATTY. FOR DBT.
9/7/22 INSTALLMENT FEE PAID \$310

Final Ruling

As the installment fee has been paid, the order to show cause is discharged. The case will remain pending. The court notes there is still a remaining balance of \$3.00 for the full Petition fee.

7. [21-20025](#)-A-13 **IN RE: HAROLD DEAN**
[DPC-1](#)

CONTINUED MOTION TO DISMISS CASE
7-18-2022 [\[43\]](#)

LUCAS GARCIA/ATTY. FOR DBT.

No Ruling

8. [21-20025](#)-A-13 **IN RE: HAROLD DEAN**
[LBG-202](#)

MOTION TO MODIFY PLAN
8-12-2022 [\[49\]](#)

LUCAS GARCIA/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

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

Chapter 13 plan modification is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. "[T]he only limits on modification are those set forth in the language of the Code itself,

coupled with the bankruptcy judge's discretion and good judgment in reviewing the motion to modify." *In re Powers*, 202 B.R. 618, 622 (B.A.P. 9th Cir. 1996).

PLAN FEASIBILITY

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

Plan Delinquency

The trustee indicates that the plan payments are delinquent because the plan improperly states the total amount of the projected payments to be received by the trustee as of September 25, 2022. The plan states that the total is \$13,535.00, while the trustee's calculations and records project this amount to be \$14,375.00.

The plan cannot be confirmed if the plan payments are not current. The payments are not current as the plan was incorrectly calculated and drafted with an incorrect number. This drafting error is fatal as creditors and interested parties have been notified of the incorrect amount provided in the plan. A further modified plan is required. The court will deny the motion.

Schedules I and J

The debtor has not supported the plan by filing recently amended Schedules I. The most recently filed Schedule I was filed on January 19, 2021, approximately 21 months ago, ECF No. 13. Without both current income and expense information the court and the chapter 13 trustee are unable to determine whether the plan is feasible or whether the plan has been proposed in good faith. See 11 U.S.C. § 1325(a)(3), (6).

The debtor has filed a supplemental Schedule J. See *Schedules J*, ECF No. 55. Unfortunately, this document raises additional, unexplained issues which negatively impact the feasibility of the

proposed plan. For the first time since the petition was filed a monthly vehicle payment of \$350.00 is listed in the schedule. The explanation for the new budget item is included in the debtor's declaration in support of the motion and is as follows:

The Chapter 13 Plan was modified because increased costs of living and a known and listed secured creditor for spouse was not a creditor of myself. The creditor did not file a proof of claim and my spouse and I are paying them directly. This creditor is in the schedules and was originally budgeted for payment in the plan and we cannot afford to "double" the secured payment by paying an extra \$425 to the trustee as well as the direct payment of the car.

Declaration, ECF No. 52, 2:22-25, 3:1-2.

The trustee objects as the declaration does not properly identify the creditor or the affected vehicle. The court agrees with the trustee, the declaration lacks the specificity required for the court to properly analyze the debtor's intentions, the feasibility of the plan and the debtor's good faith in proposing the modified plan. Thus, the debtor has not proven the requirements of 11 U.S.C. § 1325 (a)(3), (6).

The court will deny the motion.

CIVIL MINUTE ORDER

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

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

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

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

9. [21-21825](#)-A-13 **IN RE: ROSE THORNWELL**
[FF-2](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FRALEY &
FRALEY, PC FOR GARY RAY FRALEY, DEBTOR'S ATTORNEY(S)
9-2-2022 [\[34\]](#)

GARY FRALEY/ATTY. FOR DBT.

Final Ruling

Application: Allowance of Additional Compensation

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

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

Order: Civil minute order

Number of Requests for Additional Compensation: First

Compensation Requested: \$1,995.00

Reimbursement of Expenses: \$57.00

COMPENSATION AND EXPENSES

In this chapter 13 case, Gary Fraley, attorney for the debtor(s), has applied for an allowance of additional compensation.

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

SUBSTANTIAL AND UNANTICIPATED POST-CONFIRMATION WORK

The applicant filed Form EDC 3-096, *Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys*, opting-in to the no-look fee approved through plan confirmation. See ECF No. 4. The plan also shows the attorney opted in pursuant to Local Bankruptcy Rule 2016-1(c). The applicant now seeks additional fees, arguing that the no-look fee is insufficient to fairly compensate the applicant. However, in cases in which the fixed, no-look fee has been approved as part of a confirmed plan, an applicant requesting additional compensation must show that substantial and unanticipated post-confirmation work was necessary. See LBR 2016-1(c).

Because the debtor(s) opted-in to the no-look fee, the evidentiary record shows that the debtor(s) anticipated and agreed to pay \$4,000.00 to the applicant for services rendered in this case. See *Rights and Responsibilities*, ECF No. 4.

The court will continue the matter to allow the debtor to file a declaration indicating support of the payment of additional compensation. Alternatively, the applicant shall file a declaration indicating that the debtor refuses to file a declaration in support of the payment of additional compensation.

LIMITED NOTICING AND STANDARDIZED CERTIFICATE OF SERVICE

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

The form certificate of service is intended to allow parties to memorialize service efficiently and accurately, and to aid the court in ensuring sufficient service is achieved in each proceeding.

In support of this motion, attorney Gary Fraley filed a Certificate of Service, ECF No. 38. The Certificate of Service represents a textbook example of the proper use of the new local rules and form Certificate of Service. Sections 3, 4 and 5 are properly completed. Section 6(B)(1) properly attaches the Clerk's Official Matrix of Registered Users of the Court's electronic-filing system. *Id.* at p. 4. Section 6(B)(2) is supported the Clerk's Matrix of Creditors, dated July 22, 2022. Counsel is to be commended on his precise and skillful application of the new local rules.

The court notes that in this matter limited notice to creditors was an option available to the moving party under LBR 2002-3. However, the moving party was not required to limit notice.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the hearing on this motion is continued to November 1, 2022, at 9:00 a.m.

IT IS FURTHER ORDERED that not later than October 11, 2022, the debtor shall file and serve a declaration in support of the motion for additional compensation; or the applicant shall file a declaration stating that the debtor(s) refuses to do so.

IT IS FURTHER ORDERED that not later than 14 days prior to the continued hearing date, the chapter 13 trustee shall file and serve a statement of position regarding the motion.

10. [22-22232](#)-A-13 **IN RE: DUANE OTT**
[MEV-1](#)

MOTION TO EXTEND AUTOMATIC STAY
9-7-2022 [\[10\]](#)

MARC VOISENAT/ATTY. FOR DBT.

Tentative Ruling

Motion: Extend the Automatic Stay

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

Disposition: Denied

Order: Civil minute order

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

STAY EXTENSION

Upon request of a party in interest, the court may extend the automatic stay where the debtor has had one previous bankruptcy case that was pending within the 1-year period prior to the filing of the current bankruptcy case but was dismissed. See 11 U.S.C. § 362(c)(3)(B). The motion and notice of hearing must be filed before the expiration of the 30-day period following the date of the petition. The hearing on such motion must also be completed before the expiration of this period. 11 U.S.C. § 362(c)(3)(B). The court must find that the filing of the later case - not the previous case - is in good faith as to the creditors to be stayed. *Id.*

This statute further provides that "a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)" in cases in which "a previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was dismissed within such 1-year period, after the debtor failed to - [(i)] file or amend the petition or other documents as required by this title or the court without substantial excuse . . . ; [(ii)] provide adequate protection as ordered by the court; or [(iii)] perform the terms of a plan confirmed by the court." *Id.* § 362(c)(3)(C)(i)(II).

Additionally, "a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)" in cases in which "there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11 or 13 or any other reason to conclude that the later case will be concluded - [(i)] if a case under chapter 7, with a discharge; or [(ii)] if a case under chapter 11 or 13, with a confirmed plan that will be fully performed." *Id.* § 362(c)(3)(C)(i)(III).

DISCUSSION

Proposed Plan is not Feasible

While it is true the debtor has had only one prior chapter 13 case during the 1 year preceding the filing of the instant case, the debtor has filed three previous, unsuccessful chapter 13 cases.

Case Number	Dated Filed	Attorney	Plan Confirmed	Date Dismissed
17-25398	08/15/2017	Voisenat	Yes	09/20/2018
18-27372	11/26/2018	Voisenat	Yes	08/26/2019
19-26448	10/16/2019	Voisenat	Yes	03/30/2022

The debtor has enjoyed the protection of the automatic stay for a period exceeding 4 years. Each of the previous three cases were filed within three months of the previously dismissed case. The debtor has not explained how the instant plan will be feasible and successful in this context.

The debtor states that he will receive a distribution from his late grandmother's estate in the approximate amount of \$15,000.00. See *Declaration*, ECF No. 12, 2:14-16. The plan calls for the payment of the \$15,000.00 in month one. See *Chapter 13 Plan*, ECF No. 3. However, the anticipated inheritance is not listed in Schedules A/B, ECF No. 1. As such there is conflicting evidence about whether the debtor can comply with the terms of the plan, which in turn means the proposed plan is not feasible at the outset under 11 U.S.C. §1325(a)(6).

Finally, the proposed monthly plan payment (\$3,112.97) represents 41% of the debtor's gross monthly income (\$7,500.00), and nearly 52% of the debtor's income (\$6,000.00) after subtracting projected income taxes. This is a significant consideration which the debtor has failed to address in his declaration.

The debtor has offered insufficient evidence that the current case was filed in good faith as to the creditors to be stayed. See 11 U.S.C. § 362(c)(3)(B). A presumption, moreover, that the current case was not filed in good faith arises. The evidence presented by the debtor in his declaration and his bankruptcy schedules is inconsistent, and the debtor has failed to explain how this plan will be successful when plans in three previous cases were not. The motion will be denied.

LIMITED NOTICING AND STANDARDIZED CERTIFICATE OF SERVICE

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

While its use is not yet mandatory Mark Voisenat, attorney for the movant, used the standardized Certificate of Service, EDC 7-005 in

memorializing the service of documents in this motion. The form certificate of service is intended to allow parties to memorialize service efficiently and accurately, and to aid the court in ensuring sufficient service is achieved in each proceeding. The court appreciates counsel's use of the Form EDC 7-005, Certificate of Service.

There are problems with the use and completion of the standardized Certificate of Service, EDC 7-005. *See Certificate of Service*, ECF No. 13.

First, Section 3 purports to limit notice under Fed. R. Bankr. 2002(h), LBR 2003. Limited notice is not appropriate in this matter as a motion to extend the stay is not a Rule 2002(a) motion. Thus, the limited notice provisions are inapplicable to this motion and notice to all creditors must be given. The error is not fatal in this case as Section 5 indicates that all creditors were served with the motion and the matrix (although not the Clerk's Matrix of Creditors as required) filed indicates that all creditors were served. The court reminds counsel that beginning November 1, 2022, the Clerk's Matrix of Creditors must be attached to the certificate.

Second, the movant checked Rule 7004 as applicable, which is incorrect in this motion as service is required under Fed. R. Civ. P. 5.

Third, Section 4 is incorrectly completed as it fails to list the documents which were served. This error is not fatal in this case as the documents were listed on page 1 of the certificate. *See* ECF No. 13.

Fourth, the movant should have checked box 6(B)(2) and also the box indicting the "Clerk's Matrix of Creditors", and then attached 6B2. Fourth, the attachment is incorrectly labelled 6A, when it should be labeled as 6B2.

CIVIL MINUTE ORDER

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

The debtor's Motion to Extend Stay 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. [22-21833](#)-A-13 **IN RE: CORNELIUS HARRELL**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
8-30-2022 [\[14\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Tentative Ruling

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

12. [22-21736](#)-A-13 **IN RE: ELIFAZ/LINDA MARTINEZ**
[DPC-1](#)

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

PETER MACALUSO/ATTY. FOR DBT.

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan
Notice: Continued from September 13, 2022
Disposition: Overruled
Order: Civil minute order

The hearing on the trustee's objection to confirmation was continued to allow the court to rule on the motions to value collateral filed by the debtors. The court has granted the motions to value collateral, PGM-1 and PGM-2. As the court indicated in its prior ruling "[i]f the motions to value collateral are granted the court will overrule the trustee's objection without further notice or hearing." See *Civil Minutes*, ECF No. 34.

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 debtors have sustained that burden, and the court will approve confirmation of the plan. The court overrules the trustee's objection to confirmation.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the objection is overruled. The debtors are ordered to submit an Order Confirming the Plan which is approved by the Chapter 13 Trustee.

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

MOTION TO VALUE COLLATERAL OF RENT-A-CENTER, INC.
8-23-2022 [\[18\]](#)

PETER MACALUSO/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Value Collateral - Personal Property; Non-vehicular

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

Disposition: Granted

Order: Civil minute order

Subject: Washer, Dryer, Stove, Sofa

Value: \$800.00

The debtors seek an order valuing the collateral of respondent, Rent a Center, in the amount of \$800.00

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the respondent is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

VALUATION OF COLLATERAL

Chapter 13 debtors may value collateral by noticed motion. Fed. R. Bankr. P. 3012. Section 506(a) of the Bankruptcy Code provides, "An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of

the value of such creditor's interest in the estate's interest in such property" and is unsecured as to the remainder. 11 U.S.C. § 506(a). For personal property, value is defined as "replacement value" on the date of the petition. *Id.* § 506(a)(2). For "property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." *Id.* The costs of sale or marketing may not be deducted. *Id.*

The right to value non-vehicular, personal property collateral in which the creditor has a purchase money security interest is limited to such collateral securing a debt that was incurred more than one year before the date of the petition. 11 U.S.C. §1325(a) (hanging paragraph).

In this case, the debtor seeks to value collateral consisting of personal property described as a washer, dryer, stove, and sofa. The debt secured by such property was not incurred within the 1-year period preceding the date of the petition. The court values the collateral at \$800.00.

CIVIL MINUTE ORDER

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

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

The debtor's motion to value non-vehicular, personal property collateral has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The personal property collateral described as a washer, dryer, stove, and sofa has a value of \$800.00. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$800.00 equal to the value of the collateral that is unencumbered by senior liens. The respondent has a general unsecured claim for the balance of the claim.

14. [22-21736](#)-A-13 **IN RE: ELIFAZ/LINDA MARTINEZ**
[PGM-2](#)

MOTION TO VALUE COLLATERAL OF MARINER FINANCE, LLC
8-23-2022 [\[23\]](#)

PETER MACALUSO/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Value Collateral - Personal Property; Non-vehicular

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

Disposition: Granted

Order: Civil minute order

Subject: Lawn Mower

Value: \$500.00

The debtors seek an order valuing the collateral of respondent, Mariner Finance, LLC, in the amount of \$500.00

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the respondent is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

VALUATION OF COLLATERAL

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

The right to value non-vehicular, personal property collateral in which the creditor has a purchase money security interest is limited to such collateral securing a debt that was incurred more than one year before the date of the petition. 11 U.S.C. §1325(a) (hanging paragraph).

In this case, the debtor seeks to value collateral consisting of personal property described as a lawn mower. The debt secured by such property was not incurred within the 1-year period preceding

the date of the petition. The court values the collateral at \$500.00.

CIVIL MINUTE ORDER

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

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

The debtor's motion to value non-vehicular, personal property collateral has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The personal property collateral described as a lawn mower has a value of \$500.00. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$500.00 equal to the value of the collateral that is unencumbered by senior liens. The respondent has a general unsecured claim for the balance of the claim.

15. [21-20843](#)-A-13 **IN RE: KENNETH/CARRIE THOMAS**
[SLH-1](#)

MOTION TO REFINANCE
8-29-2022 [\[23\]](#)

SETH HANSON/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Approve New Debt - Refinance Mortgage Loan

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

Disposition: Granted

Order: Prepared by moving party

The debtors seek to incur new debt to refinance an existing mortgage loan. The proposed transaction will complete the chapter 13 plan and pay all unsecured creditors 100%, a significant increase from the 53% provided in the currently confirmed plan.

The chapter 13 trustee objected to the motion requesting that certain provisions regarding the payment of obligations under the plan and his demand in escrow be included in the order, and that the order state that unsecured creditors will receive 100%. The trustee further objected because an Estimated Closing Statement was not served with the motion. The trustee does not object to the terms of the motion as stated.

Trustee's Standardized Language

The court agrees with the trustee that his requested language must be included in the order granting the motion, and that the order must increase the distribution to unsecured creditors under the plan. The escrow and demand provisions requested by the trustee outline the procedure and mechanics of the trustee's demand for payment from escrow and payment of the funds by the escrow company.

The court observes that the escrow and demand language is routinely requested by the trustee in motions to refinance and motions to sell property.

The court notes that the pleadings indicate that debtors' counsel was in consultation with the trustee's office prior to the filing of this motion. Thus, the trustee could have made these requirements known to counsel. As such, if the debtor agrees with the provisions, the trustee's escrow terms should be included at the outset as part of the prima facie case for the motion to refinance or to sell property. Inclusion of these terms obviates the need for the trustee to oppose the motion and assists the court in its review of the motion.

Estimated Closing Statement

The court considers the estimated closing statement to be an integral part of the debtor's prima facie case in a motion of this type. As such, the closing statement should be submitted with the moving papers and not in response to the trustee's opposition to the motion. Future motions of this type, which are unsupported at the outset by appropriate evidence, will be denied.

Absent further objection by the trustee, the court will grant the motion and approve the debtor's incurring of this new debt.

16. [22-21652](#)-A-13 **IN RE: RICHARD/VICKIE CAMPBELL**
[GC-1](#)

MOTION TO VALUE COLLATERAL OF ONEMAIN FINANCIAL GROUP
7-27-2022 [\[12\]](#)

JULIUS CHERRY/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Value Collateral - Motor Vehicle

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

Disposition: Granted

Order: Civil minute order

Subject: 2002 Toyota Tacoma

Value: \$4,500.00

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

The debtors seek an order valuing the collateral of OneMain Financial Group, a 2002 Toyota Tacoma, at \$4,500.00.

VALUATION OF COLLATERAL

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

A debtor's ability to value collateral consisting of a motor vehicle is limited by the terms of the hanging paragraph of § 1325(a). See 11 U.S.C. § 1325(a) (hanging paragraph). Under this statute, a lien secured by a motor vehicle cannot be stripped down to the collateral's value if: (i) the lien securing the claim is a purchase money security interest, (ii) the debt was incurred within the 910-day period preceding the date of the petition, and (iii) the motor vehicle was acquired for the debtor's personal use. 11 U.S.C. § 1325(a) (hanging paragraph).

In this case, the debtors seek to value collateral consisting of a motor vehicle described as a 2002 Toyota Tacoma. The debt owed to

the respondent is not secured by a purchase money security interest. See 11 U.S.C. § 1325(a) (hanging paragraph). The court values the vehicle at \$4,500.00.

CIVIL MINUTE ORDER

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

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

The debtors' motion to value collateral consisting of a motor vehicle has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The personal property collateral described as a 2002 Toyota Tacoma has a value of \$4,500.00. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$4,500.00 equal to the value of the collateral that is unencumbered by senior liens. The respondent has a general unsecured claim for the balance of the claim.

17. [22-21761](#)-A-13 **IN RE: ADOLFO/ALEJANDRA SANCHEZ**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
8-23-2022 [\[16\]](#)

MARK SHMORGON/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

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

In re Andrews, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*, 32 F.3d 405, 407-08 (9th Cir. 1994).

LIQUIDATION

(a) Except as provided in subsection (b), the court shall confirm a plan if--

. . .

(4) the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date;

. . .

11 U.S.C. § 1325(a)(4).

The chapter 13 trustee objected to confirmation of the plan contending that the plan failed the liquidation test as the debtors had claimed exemptions pursuant to CCP 704.140 and CCP 704. The debtors filed an Amended Schedule C on September 13, 2022. See ECF No. 23.

On September 20, 2022, the trustee filed a Status Report apprising the court of his position after reviewing the Amended Schedule C. The trustee's calculation shows that the plan fails the liquidation test of 11 U.S.C. § 1325(a)(4) because there is non-exempt equity in assets totaling \$20,772.08 after projecting costs of sale and projected Chapter 7 Trustee Fees.

The court will sustain the trustee's objection.

CIVIL MINUTE ORDER

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

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

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

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

18. [22-21563](#)-A-13 **IN RE: JOLENE/AARON SILVA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
8-29-2022 [\[31\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Tentative Ruling

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

19. [22-21365](#)-A-13 **IN RE: RAFAEL/VIANA LARA**
[DPC-2](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
8-24-2022 [\[46\]](#)

KIM BEATON/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Objection: Objection to Claim of Exemptions

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

Disposition: Sustained

Order: Civil minute order

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this motion. 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 chapter 13 trustee objects to the debtors' claim of exemptions under CCP § 703.140(b)(1) and (5). The debtors filed a response to the motion stating that they anticipated filing an amendment to Schedule C by September 26, 2022. *See Response*, ECF No. 62.

EXEMPTION EXCEEDS STATUTORY LIMIT

The debtors have claimed an exemption in property (one or more items of property) under Cal. Civ. Proc. Code § 703.140(b)(1) and (5). The debtors' claimed exemption exceeds the statutory limit of \$31,950.00 under § 703.140(b)(1) plus \$1,700.00 under § 703.140(b)(5). The maximum amount which is permitted under the combined paragraphs (1) and (5) of this subsection as of April 1, 2022, totals \$33,650.00.

The debtors' exemption claimed under § 703.140(b)(1) and (5) will be disallowed to the extent it exceeds the statutory limit of \$33,650.00. The trustee's objection will be sustained.

CIVIL MINUTE ORDER

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

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

The trustee's objection to the debtors' claim of exemptions 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 debtors' exemption claimed under Cal. Civ. Proc. Code § 703.140(b)(1) and (5) will be disallowed to the extent it exceeds the statutory limit of \$33,650.00.

20. [22-21677](#)-A-13 **IN RE: GREGORY BUSH**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
8-23-2022 [\[34\]](#)

ARETE KOSTOPOULOS/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
DEBTOR DISMISSED: 09/01/2022

Final Ruling

This case was dismissed on September 1, 2022. This motion is removed from the calendar as moot. No appearances are required.

21. [22-21780](#)-A-13 **IN RE: JEFFREY/DEXTER PERALTA**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
8-23-2022 [\[14\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

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

MEETING OF CREDITORS

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

11 U.S.C. § 343.

Debtors' counsel did not attend the meeting of creditors. As such the trustee was unable to examine the debtors even though the debtors were in attendance. 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.

22. [21-22486](#)-A-13 **IN RE: ANNA MURPHY**
[DPC-4](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
8-22-2022 [[219](#)]

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Objection: Objection to Claim of Exemptions
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Sustained
Order: Civil minute order

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this motion. 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 chapter 13 trustee objects to the debtor's claim of exemptions under Oregon state law.

EXEMPTION EXCEEDS STATUTORY LIMIT

Funds in Deposit Accounts

- (1) Funds that are exempt from execution under ORS 18.358, 18.385, 178.345, 238.445, 344.580, 407.595, 411.760, 414.095, 655.530, 656.234, 657.855 and 748.207 remain exempt when deposited in an account in a financial institution as long as the exempt funds are reasonably identifiable.
- (2) *Subsection (1) of this section does not apply to any accumulation of funds greater than \$7,500.*
- (3) All funds that are exempt under federal law remain exempt when deposited in an account in a financial institution as long as the exempt funds are reasonably identifiable.
- (4) The application of subsections (1) and (3) of this section is not affected by the commingling of exempt and nonexempt funds in an account. For the purpose of

identifying exempt funds in an account, first in, first out accounting principles shall be used.

(5) The provisions of this section do not affect the duties of a garnishee with respect to amounts in accounts that are not subject to garnishment under ORS 18.784.

Or. Rev. Stat. § 18.348 (emphasis added).

The debtor has claimed an exemption in property (one or more items of property) under Or. Rev. Stat. § 18.348. The debtor's claimed exemption exceeds the statutory limit of \$7,500.00 permitted under subsection 2.

The debtor's exemption claimed under Or. Rev. Stat. § 13.348 will be disallowed to the extent it exceeds the statutory limit of \$7,500.00. The trustee's objection will be sustained.

Retirement Account

(2) Subject to the limitations set forth in subsection (3) of this section, a retirement plan shall be conclusively presumed to be a valid spendthrift trust under these statutes and the common law of this state, whether or not the retirement plan is self-settled, and a beneficiary's interest in a retirement plan shall be exempt, effective without necessity of claim thereof, from execution and all other process, mesne or final.

(3) Notwithstanding subsection (2) of this section:
(a) A contribution to a retirement plan, other than a permitted contribution, shall be subject to ORS 95.200 to 95.310 concerning fraudulent transfers; and
(b) *Unless otherwise ordered by a court under ORS 25.387, 75 percent of a beneficiary's interest in a retirement plan, or 50 percent of a lump sum retirement plan disbursement or withdrawal, shall be exempt from execution or other process arising out of a support obligation or an order or notice entered or issued under ORS 25.501 to 25.556 or ORS chapter 25, 107, 108, 109, 110, 419B or 419C.*

Or. Rev. Stat. Ann. § 18.358(2), (3) (emphasis added).

The debtor has claimed an exemption in a retirement account in the amount of \$7,000.00 (which represents the total amount in the account) under Or. Rev. Stat. § 18.358. The debtor's claimed exemption exceeds the statutory limit which is 75% of \$7,000.00 (\$5,250.00) permitted under subsection 3(b).

The debtor's exemption claimed under Or. Rev. Stat. § 13.358 will be disallowed to the extent it exceeds the limit of \$5,250.00. The trustee's objection will be sustained.

Unclear Request by Debtor

The debtor's request in her responsive pleadings is unclear to the court. The request states as follows:

As such, the Motion before the Court should be continued to a date after the Objection to Claim and Objection to Exemptions have been heard.

Reply, ECF No. 236, 2:20-22.

The court cannot determine if the debtor requests a further hearing or if this statement is in error.

CIVIL MINUTE ORDER

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

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

The trustee's objection to the debtor's claim of exemptions 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 debtor's exemption claimed under Or. Rev. Stat. § 13.348 will be disallowed to the extent it exceeds the statutory limit of \$7,500.00. The debtor's exemption claimed under Or. Rev. Stat. § 13.358 will be disallowed to the extent it exceeds \$5,250.00.

23. [22-22189](#)-A-13 **IN RE: FLORA BROUGHTON**
[PGM-1](#)

MOTION TO EXTEND AUTOMATIC STAY
9-12-2022 [\[16\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Tentative Ruling

Motion: Extend the Automatic Stay

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

Disposition: Denied

Order: Civil minute order

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

STAY EXTENSION

Upon request of a party in interest, the court may extend the automatic stay where the debtor has had one previous bankruptcy case that was pending within the 1-year period prior to the filing of the current bankruptcy case but was dismissed. See 11 U.S.C. § 362(c)(3)(B). The motion and notice of hearing must be filed before the expiration of the 30-day period following the date of the petition. The hearing on such motion must also be completed before the expiration of this period. 11 U.S.C. § 362(c)(3)(B). The court must find that the filing of the later case - not the previous case - is in good faith as to the creditors to be stayed. *Id.*

This statute further provides that "a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)" in cases in which "a previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was dismissed within such 1-year period, after the debtor failed to - [(i)] file or amend the petition or other documents as required by this title or the court without substantial excuse . . . ; [(ii)] provide adequate protection as ordered by the court; or [(iii)] perform the terms of a plan confirmed by the court." *Id.* § 362(c)(3)(C)(i)(II).

Additionally, "a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)" in cases in which "there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11 or 13 or any other reason to conclude that the later case will be concluded - [(i)] if a case under chapter 7, with a discharge; or [(ii)] if a case under chapter 11 or 13, with a confirmed plan that will be fully performed." *Id.* § 362(c)(3)(C)(i)(III).

DISCUSSION

This is the third chapter 13 case filed by the debtor since 2020. The debtor's most recently filed case was dismissed after confirmation of the plan for failure to make plan payments. The circumstances surrounding the dismissal of the previous case are unique as the debtor encountered significant difficulties which explain sufficiently why her performance of the previous plan became impossible. First, the debtor's son was prevented from returning to the United States as he was detained in Uganda because of travel restrictions due to the COVID-19 pandemic. Second, the debtor's mother became terminally ill, necessitating increased care by the debtor. These circumstances appear to have eased with the debtor's son now returned to the United States and appropriate arrangements made for the comfort and care of the debtor's mother.

However, the information provided in support of the debtor's plan, ECF No. 3, does not evidence the debtor's *ability* to perform the plan.

The Plan, *id.*, provides for monthly payments of \$10,200.00 for 60 months. The debtor's income, as indicated on Schedule I, is \$12,441.04. See *Schedule I*, ECF No. 1. The debtor's son has indicated his willingness and ability to contribute to his mother's plan by paying \$7,000.00 per month. The declaration of the debtor's son states:

I am willing and able to contribute the sum of \$7,000.00 each month to ensure that the Plan payments are timely made. That the money I will contribute to the household (sic) and I do not expect to be repaid, as I have a new job and can afford to take care of my Mother.

Declaration of Michael Broughton, ECF No. 20, 1:22-27.

The court appreciates the willingness of Mr. Broughton to assist his mother, but the declaration lacks evidentiary value. There are only general and cursory allegations regarding Mr. Broughton's ability to make such significant monthly contributions to his mother over 60 months.

At a minimum the following information should have been provided: 1) the name of Mr. Broughton's employer; 2) his monthly income and length of time employed; 3) a detailed analysis of Mr. Broughton's monthly income and expenses showing that he can reasonably be relied upon to contribute \$7,000.00 per month for 60 months. None of this factual detail has been provided. Given the amount of the anticipated contribution this omission is fatal.

Even if Mr. Broughton had provided sufficient detail in support of this motion the court finds that the plan payment of \$10,200.00 per month, which represents 82% of the debtor's monthly income, is unrealistic.

The debtor has offered insufficient evidence that the current case was filed in good faith as to the creditors to be stayed. See 11 U.S.C. § 362(c)(3)(B). A presumption, moreover, that the current case was not filed in good faith arises. Insufficient evidence has been offered to rebut this presumption. The motion will be denied.

EXHIBITS ARE NOT IN COMPLIANCE WITH LOCAL RULES

- 2) *Exhibit Index*. Each exhibit document filed shall have an index at the start of the document that lists and identifies by exhibit number/letter each exhibit individually and shall state the page number at which it is found within the exhibit document.
- 3) *Numbering of Pages*. The exhibit document pages, including the index page, and any separator, cover, or divider sheets, shall be consecutively numbered and shall state the exhibit number/letter on the first page of each exhibit.

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

The exhibits filed by the debtor are not referenced in the index by page number, nor are the exhibit pages numbered as required under LBR 9004-2(d)(2), (3). See *Exhibits*, ECF No. 18.

The purpose of LBR 9004-2(d)(2), (3) is to ensure that the court and all interested parties can efficiently and accurately locate and review appropriate documents in support of a motion. This is particularly important where there are multiple documents submitted as exhibits.

In the future, failure to follow local rules may result in denial of the motion and/or other sanctions. LBR 1001-1(g).

CIVIL MINUTE ORDER

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

The debtor's motion to extend the automatic stay 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.

24. [21-21198](#)-A-13 **IN RE: ANDREW NILSEN**
[DPC-1](#)

OBJECTION TO CLAIM OF DEREK JACOB YOUNGBLOOD, CLAIM NUMBER 6
AND/OR OBJECTION TO CLAIM OF DEREK JACOB YOUNGBLOOD, CLAIM
NUMBER 7
8-10-2022 [\[86\]](#)

MARK BRIDEN/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.

Final Ruling

Objection: Objection to Claim

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

Disposition: Sustained in part; continued to December 13, 2022, at
9:00 a.m.

Order: Civil minute order

Claims Bar Date: September 20, 2021

Formal Claims 6 and 7 Filed: February 1, 2022

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this objection. 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 chapter 13 trustee objects to Claims 6 and 7 filed by Derrick Jacob Youngblood. Specifically, the trustee seeks orders: 1) disallowing Claim No. 7 as a duplicate of Claim 6; 2) disallowing Claim No. 6 as secured; 3) disallowing Claim No. 6 as priority or allowing it as priority only for \$3,205.00; 4) either disallowing Claim No. 6 as untimely; or 5) allowing Claim No. 6 as an informal proof of claim with an unsecured status in the amount of \$70,257.51 less any amount allowed as priority.

DUPLICATE CLAIMS

The objection asserts that Claim No. 7 is a duplicate of Claim No. 6. Claim No. 7 asserts the same obligation in the same amount as Claim No. 6, which the claimant has filed against the same debtor. Both claims were filed on the same date. Absent any opposition to the objection, the court will sustain the objection and disallow Claim No. 7, the duplicate claim. Claim No. 7 will be disallowed and expunged in its entirety.

UNTIMELY CLAIM

Legal Standards

Ordinarily, in chapter 13 and 12 cases, late-filed claims are to be disallowed if an objection is made to the claim. 11 U.S.C. § 502(b)(9). Some exceptions for tardily filed claims apply in chapter 7 cases. See *id.* And these exceptions permit the tardily filed claims in chapter 7 but may lower the priority of distribution on such claims unless certain conditions are satisfied. See *id.* § 726(a)(1)-(3).

Some exceptions also exist under the Federal Rules of Bankruptcy Procedure. See *id.* § 502(b)(9); Fed. R. Bankr. P. 3002(c). Federal Rule of Bankruptcy Procedure 9006(b)(3) provides that “[t]he court may enlarge the time for taking action under [certain rules] only to the extent and under the conditions stated in those rules.” Fed. R. Bankr. P. 9006(b)(3) (emphasis added). Rule 3002(c) is identified in Rule 9006(b)(3) as a rule for which the court cannot enlarge time except to the extent and under the conditions stated in the rule. *Id.*

In short, the general rule in chapter 13 and 12 cases is that a creditor must file a timely proof of claim to participate in the distribution of the debtor’s assets, even if the debt was listed in the debtor’s bankruptcy schedules. See *In re Barker*, 839 F.3d 1189, 1196 (9th Cir. 2016) (holding that bankruptcy court properly rejected creditor’s proofs of claim that were filed late in a chapter 13 case even though the debt had been scheduled). A plain reading of the applicable statutes and rules places a burden on each creditor in such cases to file a timely proof of claim. Absent an exception under Rule 3002(c), a claim will not be allowed if this burden is not satisfied. *Id.* at 1194.

Discussion

The claims bar date in this case was September 20, 2021. The remaining claim, Claim No. 6, was filed February 6, 2022, after the claims bar date.

Here, the respondent’s proof of claim was filed after the deadline for filing proofs of claim. None of the grounds for extending time to file a proof of claim under Rule 3002(c) are applicable. Fed. R. Bankr. P. 3002(c)(1)-(6). The exceptions in § 502(b)(9) for tardily filed claims under § 726(a) do not apply. So, Claim No. 6 will be disallowed.

The court sustains the objection and finds that Claim No. 6 was not filed timely. Claim No. 6 will be disallowed.

INFORMAL PROOF OF CLAIM

The chapter 13 trustee argues that Claimant Youngblood may be able to assert an informal proof of claim.

Informal Claim

The Ninth Circuit recognizes the informal proof of claim doctrine whereby claims not filed in the proof of claim format may be deemed valid. See *In re Sambo's Restaurants, Inc.*, 754 F2d 811, (9th Cir. 1985).

For the court to allow an informal proof of claim each of the following elements must be proven.

Creditor still must establish each of the elements that have consistently been required by the cases for over seventy-five years: (1) presentment of a writing; (2) within the time for the filing of claims; (3) by or on behalf of the creditor; (4) bringing to the attention of the court; (5) the nature and amount of a claim asserted against the estate.

In re Edelman, 237 B.R. 146, 155 (B.A.P. 9th Cir. 1999).

Every case located by this Panel, including those cited by Creditor, requires, at an absolute minimum, that a writing be received by either the bankruptcy court or a representative of the bankruptcy estate no later than the claims bar date.

Id. at 155 (emphasis added).

Delivery of the writing to the debtor during the claims period is sufficient. See *id.*, at 155.

DISCUSSION

On May 13, 2021, claimant Derrick Youngblood filed an application to renew a judgment held against the debtor in the Superior Court of California, Shasta County. See ECF No. 85. The application was accompanied by the Declaration of K. Thomas Smith, which details the amount of the judgment and accounts for accrued interest. The judgment was renewed, and a Notice of Renewal of Judgement was issued on May 17, 2021. See *id.*

The renewal documents appear to satisfy elements 1-3 and 5 as mandated above in *Edelman*. Missing is proof that the document was "received" as required in the fourth element. Although it is likely that the Notice of Renewal of Judgment was sent to the debtor by the state court, there is no evidence on the record that it was delivered to and "received by the bankruptcy court, or a representative of the bankruptcy estate" no later than the claims bar date as required under *Edelman*.

The court will continue the hearing on this matter to allow the parties to augment the evidentiary record.

Secured or Priority Status

The trustee objects to the secured status and priority status of the formal claim as filed. The formal claim does not identify the basis of the priority status asserted. Neither are there any documents attached to either claim evidencing a perfected security interest in property of the debtor.

The court will continue the hearing on this matter to allow the parties to augment the evidentiary record regarding the unsecured, secured, or priority status of any potential informal proof of claim.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the objection is sustained in part. The court sustains the objection and disallows Claim No. 7, as a duplicate claim. Claim No. 7 is disallowed and expunged in its entirety.

IT IS FURTHER ORDERED that the objection is sustained as to formal Claim No. 6. The court finds that Claim No. 6 was not filed timely. Claim No. 6 will be disallowed in its entirety.

IT IS FURTHER ORDERED that the objection is continued to December 13, 2022, at 9:00 a.m. No later than October 10, 2022, the chapter 13 trustee shall file and serve a notice of continued hearing on the objection to claim on all interested parties. The notice shall advise the parties that the hearing is continued for the limited purposes of supplementing the evidentiary record regarding the allowance of an informal proof of claim on behalf of Derrick Youngblood. Evidence submitted by the parties is limited to the assertion of, or opposition to, the allowance of an informal claim on behalf of Derrick Youngblood; the amount of any such claim; and the unsecured, secured or priority status of any informal claim.

IT IS FURTHER ORDERED that no later than November 8, 2022, the claimant Derrick Youngblood, shall file and serve on all interested parties, all further evidence and argument in support of his position in this matter.

IT IS FURTHER ORDERED that no later than November 29, 2022, the chapter 13 trustee and the debtor shall file and serve on all interested parties, all further evidence and argument in support of their position in this matter.

IT IS FURTHER ORDERED that the evidentiary record will close on November 29, 2022.