

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

Honorable Fredrick E. Clement  
Bakersfield Federal Courthouse  
510 19<sup>th</sup> Street, Second Floor  
Bakersfield, California

**PRE-HEARING DISPOSITIONS**

**DAY:** WEDNESDAY  
**DATE:** OCTOBER 4, 2017  
**CALENDAR:** 9:00 A.M. CHAPTERS 13 AND 12 CASES

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

**No Ruling:** All parties will need to appear at the hearing unless otherwise ordered.

**Tentative Ruling:** If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

**Final Ruling:** Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions. If the parties stipulate to continue the hearing on the matter or agree to resolve the matter in a way inconsistent with the final ruling, then the court will consider vacating the final ruling only if the moving party notifies chambers before 4:00 pm at least one business day before the hearing date: Department A-Kathy Torres (559)499-5860; Department B-Jennifer Dauer (559)499-5870. If a party has grounds to contest a final ruling because of the court's error under FRCP 60 (a) (FRBP 9024) ["a clerical mistake (by the court) or a mistake arising from (the court's) oversight or omission"] the party shall notify chambers (contact information above) and any other party affected by the final ruling by 4:00 pm one business day before the hearing.

**Orders:** Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

1. [17-10207](#)-A-13 PEDRO/MICHELLE SARABIA MOTION TO DISMISS CASE  
[MHM](#)-3 8-10-17 [[52](#)]  
MICHAEL MEYER/MV  
STEVEN ALPERT/Atty. for dbt.

**Final Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). 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 chapter 13 trustee moves to dismiss this chapter 13 case for a delinquency in payments under the debtor's proposed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1), (c)(4) and § 1326(a)(1)(A) to dismiss the case. Payments under the proposed plan are delinquent in the amount of \$559.52.

**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 proposed chapter 13 plan in this case. The court hereby dismisses this case.

2. [17-11307](#)-A-13 SATIN BRUFF OBJECTION TO DEBTOR'S CLAIM OF  
[MHM](#)-2 EXEMPTIONS  
MICHAEL MEYER/MV 8-16-17 [[28](#)]  
VINCENT GORSKI/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

## BACKGROUND

The parties do not dispute the facts. Debtor Satin Bruff has exempted her assets under the California Code of Civil Procedure § 703.140(b). The debtor has exempted a variety of assets, including real and personal property, under § 703.140(b)(1) and (5). Together, these exemptions are known as the wildcard exemption. The debtor claims multiple exemptions under § 703.140(b)(1) and (5) by checking the box indicating that the exemption is claimed in "100% of fair market value, up to any applicable statutory limit." The exemptions claimed by the debtor to which the objection is directed are:

- |                                       |   |
|---------------------------------------|---|
| 1. 28 Myrtle Street, Bakersfield, CA. | \$128,546.00 value.<br>Section 703.140(b)(1). |
| 2. 28 Myrtle Street, Bakersfield, CA. | \$128,546.00 value.<br>Section 703.140(b)(5). |
| 3. 1998 Ford Expedition.              | \$5,500.00 value.<br>Section 703.140(b)(5).   |
| 4. 3 Dogs and 2 Cats.                 | \$250.00 value.<br>Section 703.140(b)(5).     |
| 5. Checking: Safe One Credit Union.   | \$1275.32.<br>Section 703.140(b)(5).          |
| 6. Anticipated 2016 Tax Refunds.      | \$1000.00 value.<br>Section 703.140(b)(5).    |

The trustee has objected to the debtor's claim of exemptions on grounds that § 703.140(b)(1)-(5) contains a limit of \$28,225, and that once the debtor claimed the first exemption in the real property, no available exemption remained to exempt the other assets including vehicles, animals, checking account and 2016 tax refund.

## EXEMPTIONS IN BANKRUPTCY

### General Exemption Standards

"The bankruptcy estate consists of all legal and equitable interests of the debtor in property as of the date of the filing of the petition." *Ford v. Konnoff (In re Konnoff)*, 356 B.R. 201 (B.A.P. 9th Cir. 2006) (citing 11 U.S.C. § 541(a)(1)). A debtor may exclude exempt property from property of the estate. 11 U.S.C. § 522(b)(1).

11 U.S.C. § 522 allows a debtor either to exempt property under federal bankruptcy exemptions under § 522(d), unless a state does not so authorize, or to exempt property under state or local law and non-bankruptcy federal law. *Id.* § 522(b)(2)-(3)(A), (d).

"California has opted out of the federal exemption scheme and limited [debtors in bankruptcy] to the exemptions debtors may claim in non-bankruptcy cases." *Wolfe v. Jacobson (In re Jacobson)*, 676 F.3d 1193, 1198 (9th Cir. 2012) (citations omitted); accord 11 U.S.C. §§ 522(b)(2), 522(b)(3)(A), 522(d); Cal. Civ. Proc. Code §§ 703.010(a), 703.130, 703.140.

In determining the scope or validity of an exemption claimed under state law, the court applies state law in effect on the date of the

petition. 11 U.S.C. § 522(b)(3)(A); *Wolfe*, 676 F.3d at 1199 (“[B]ankruptcy exemptions are fixed at the time of the bankruptcy petition.”); accord *In re Anderson*, 824 F.2d 754, 756 (9th Cir. 1987). “In California, exemptions are to be construed liberally in favor of the debtor.” *In re Rawn*, 199 B.R. 733, 734 (Bankr. E.D. Cal. 1996); see also *Sun Ltd. v. Casey*, 157 Cal. Rptr. 576, 576 (Cal. Ct. App. 1979).

### Burden of Proof

Section 703.580(b) of the California Code of Civil Procedure allocates the burden of proof in state-law exemption proceedings. Cal. Civ. Proc. Code § 703.580(b). The bankruptcy appellate panel in this circuit has concluded that “where a state law exemption statute specifically allocates the burden of proof to the debtor, Rule 4003(c) does not change that allocation.” *In re Diaz*, 547 B.R. 329, 337 (B.A.P. 9th Cir. 2016). In this exemption proceeding in bankruptcy, therefore, the debtor bears the burden of proof.

### **DISCUSSION**

The debtor contends that his exemptions cannot be improper because he has claimed exemptions pursuant to the instructions on form Schedule C. The debtor argues that the trustee’s objection construes his exemptions as if they were claimed in 100% of the fair market value of each asset rather than 100% of the fair market value of each asset up to the statutory limit.

In 2010, the Supreme Court issued a decision that was the basis for an amendment to Schedule C’s instructions and format. See *Schwab v. Reilly*, 560 U.S. 770 (2010) (property claimed exempt on Schedule C to which the trustee may object is property that § 522(b) and (d) permit to be exempted in kind or exempted as interests in categories of property up to a specified dollar amount). Consistent with *Schwab v. Reilly*, Schedule C was amended in 2015 to permit debtors to claim exemptions in property by specifying an exempt dollar-limited amount or 100% of fair market value up to any applicable statutory limit. See Official Form 106C (Schedule C) advisory committee’s note (2015).

The debtor’s use of the sanctioned instructions on Schedule C is beside the point, however. The trustee objects to the combination of exemptions claimed under § 703.140(b)(1) and (5) as being impermissible. The court agrees with the trustee. The debtor’s reliance on one of two alternative instructions on Schedule C is not the reason the exemptions are improper. Rather, the debtor’s application of the wildcard exemption results in the debtor’s claiming assets exempt above the statutory limit of the wildcard exemption. The debtor has applied the wildcard exemption to multiple assets with a combined value that vastly exceeds the statutory limit for this exemption.

This conclusion is supported by the following illustration. The statutory limit under the wildcard exemption of § 703.140(b)(1) and (5) is currently fixed at the amount of \$28,225.00. The debtor’s first exemption pursuant to this wildcard exemption is claimed in real property located at 28 Myrtle Street, Bakersfield, CA. The debtor states that the current value of the property is \$128,546.00. The property is subject to the lien of Wells Fargo Home Mortgage in the amount of \$104,672.00. Thus, the unencumbered amount claimed as exempt under the wildcard exemption is \$23,874.00. The next exemption

claimed by the debtor under the wildcard exemption is in a 1998 Ford Expedition valued at \$5,500.00. Added, the exemptions in the 1998 Ford Expedition and the real property together equal \$29,374.00. This exceeds the statutory limit for the wildcard exemption under § 703.140(b)(1) and (5). The other exemptions in animals, checking account funds, and a tax refund would also exceed the statutory limit after applying the wildcard exemption first to the real property and the vehicle. In fact, according to this interpretation of Schedule C, the exemptions claimed in the animals, checking account funds, and tax refunds would be impermissible given that the statutory limit for the wildcard exemption has been exhausted and exceeded by the real property and the vehicle exemptions.

Alternatively, the court could read debtor's Schedule C as claiming an exemption in \$28,225.00 of the real property given that an exemption can be claimed in encumbered property. This interpretation would also leave the wildcard exemption entirely unavailable for the other personal property assets.

In short, the debtor has claimed exemptions in a variety of different assets "up to the statutory limit" of the wildcard exemption even though the value of those assets combined greatly exceeds the statutory limit. As a result, the application of the exemption to each asset according to the instructions used becomes a logical impossibility. If the exemption is applied "up to the statutory limit" for the real property, the statutory limit is exhausted and unavailable for the personal property assets claimed exempt under the wildcard exemption.

The debtor might argue that applying the wildcard exemption to the personal property first would result in all the personal property being fully exempt, and the real property being exempt as to the remainder of the wildcard exemption. But this argument assumes that an ambiguity is interpreted in the way the debtor desires. This runs contrary to the law. "[P]roperty passes to the estate automatically, and it is the debtor's burden to make out the claim of exemption with adequate specificity." *Payne v. Wood*, 775 F.2d 202, 206 (7th Cir. 1985). Further, "[a]mbiguities in matters of claims of exemption will be construed against the debtor because 'it is important that trustees and creditors be able to determine precisely whether a listed asset is validly exempt simply by reading a debtor's schedules.'" *In re Mohring*, 142 B.R. 389, 395 (Bankr. E.D. Cal. 1992), *aff'd*, 153 B.R. 601 (B.A.P. 9th Cir. 1993), *aff'd*, 24 F.3d 247 (9th Cir. 1994) (internal quotation marks omitted). Creditors and parties in interest, moreover, should not be expected to guess which assets the debtor did not wish to claim exempt. Nor should they be expected to guess the manner in which the wildcard exemption should be allocated among a variety of assets whose value exceeds the statutory limit of the wildcard exemption.

Had the debtor claimed the wildcard exemption in a single unencumbered asset (e.g., a luxury vehicle) worth \$100,000.00, the exemption in asset's value "up to the statutory limit" would be valid because the exemption would be unambiguously claimed in exactly \$28,225.00 of such asset. Had the debtor claimed the wildcard exemption in a variety of separate assets with a combined value not exceeding the statutory limit of \$28,225.00, the exemptions might be valid and unambiguous.

Because the debtor has claimed the wildcard exemption of § 703.140(b)(1) and (5) for a variety of assets that in the aggregate

exceed the statutory limit, the 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 chapter 13 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.

3. [12-15109](#)-A-13 EDUARDO/GLENDA VALLADARES MOTION FOR DETERMINATION OF  
[MHM](#)-6 FINAL CURE FRBP 3002.1(H)  
MICHAEL MEYER/MV 9-6-17 [[146](#)]  
STEVEN ALPERT/Atty. for dbt.  
RESPONSIVE PLEADING

### **No Ruling**

4. [17-12914](#)-A-13 HENRY/REBECCA COVARRUBIAS MOTION TO CONFIRM PLAN  
[RSW](#)-1 8-17-17 [[16](#)]  
HENRY COVARRUBIAS/MV  
ROBERT WILLIAMS/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 trustee, approved by debtor's counsel

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 3015-1(d)(1), 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).

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 bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

5. [13-11119](#)-A-13 SALVADOR LOPEZ AND CONNIE MOTION TO SELL AND/OR MOTION TO  
PK-8 LOZANO PAY  
SALVADOR LOPEZ/MV 9-6-17 [[124](#)]  
PATRICK KAVANAGH/Atty. for dbt.

### **Tentative Ruling**

**Motion:** Sell Property [Real Property]

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

**Disposition:** Granted

**Order:** Prepared by moving party pursuant to the instructions below and approved as to form and content by the Chapter 13 trustee

**Property:** 132 10th St., McFarland, CA

**Buyer:** Abelardo Lopez and Alejandra Vasquez

**Sale Price:** \$163,000 (short sale)

**Sale Type:** Private sale subject to overbid opportunity

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).

Confirmation of a Chapter 13 plan revests property of the estate in the debtor unless the plan or order confirming the plan provides otherwise. 11 U.S.C. § 1327(b); *see also In re Tome*, 113 B.R. 626, 632 (Bankr. C.D. Cal. 1990).

Here, the subject property is property of the estate because the debtor's confirmed plan provides that property of the estate will not revert in debtors upon confirmation.

Section 363(b)(1) of Title 11 authorizes sales of property of the estate "other than in the ordinary course of business." 11 U.S.C. § 363(b)(1); *see also In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983) (requiring business justification). A Chapter 13 debtor has the rights and powers given to a trustee under § 363(b). 11 U.S.C. § 1303. Based on the motion and supporting papers, the court finds a proper reorganization purpose for this sale. The stay of the order provided by Federal Rule of Bankruptcy Procedure 6004(h) will be waived.

The order shall be approved by the Chapter 13 trustee as to form and content. Additionally, the order shall contain language requiring the Chapter 13 trustee to approve the escrow instructions for the sale.

6. [17-10021](#)-A-13 TERRY/MAUREEN HENDERSON MOTION TO DISMISS CASE  
[MHM](#)-2 8-15-17 [[79](#)]  
MICHAEL MEYER/MV  
D. GARDNER/Atty. for dbt.

**Final Ruling**

Having been withdrawn, the matter is deemed voluntarily dismissed.  
The court drops the matter from calendar.

7. [12-15849](#)-A-13 RAFAEL/MARTHA MOJICA MOTION TO DISMISS CASE  
[MHM](#)-3 9-5-17 [[74](#)]  
MICHAEL MEYER/MV  
PHILLIP GILLET/Atty. for dbt.

**Final Ruling**

Having been withdrawn, the matter is deemed voluntarily dismissed.  
The court drops the matter from calendar.

8. [17-10750](#)-A-13 LOIS GOUGH LOPEZ MOTION TO MODIFY PLAN  
[RSW](#)-1 8-15-17 [[33](#)]  
LOIS GOUGH LOPEZ/MV  
ROBERT WILLIAMS/Atty. for dbt.  
RESPONSIVE PLEADING

**No Ruling**

9. [10-12757](#)-A-13 LINDA SMITH MOTION TO CONVERT CASE FROM  
[MHM](#)-3 CHAPTER 13 TO CHAPTER 7  
9-6-17 [[84](#)]  
ROBERT WILLIAMS/Atty. for dbt.

**No Ruling**

10. [17-11274](#)-A-13 CLINT/JUDITH HARRISON MOTION TO CONFIRM PLAN  
[RSW](#)-3 8-23-17 [[64](#)]  
CLINT HARRISON/MV  
ROBERT WILLIAMS/Atty. for dbt.

**Tentative Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Denied, 75 day order

**Order:** Civil minute order

Debtors Clint Harrison and Judith Harrison move to confirm their First Modified Chapter 13 Plan. Chapter 13 Plan, August 23, 2017, ECF # 68. Neither the trustee, nor any creditor, has objected.



## DISCUSSION

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).

One such element is feasibility. 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).

Here, the debtors have not carried that burden. No evidence of feasibility has been offered by declaration. See Harrison decl., August 23, 2017, ECF # 66. Moreover, Statements of income and expenses, e.g., Schedules I and J, lose their presumptive effect 60 days after filing. See 11 U.S.C. § 524(m)(1) (reaffirmation agreements). In this case, the debtors most recent Schedules I and J were filed six months prior the hearing on the motion. But even if the court were to consider the debtors' most recent Schedules I and J, they reflect disposable income of \$8,470.39, Line 23c of Schedule J, April 4, 2017, ECF # 1, against a proposed plan payment of \$9,607. Chapter 13 Plan § 6.01, August 23, 2017, ECF # 68.

## 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.

Debtors Clint Harrison and Judith Harrison's motion has been presented to the court. Having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is denied.

IT IS FURTHER ORDERED that a Chapter 13 plan must be confirmed no later than the first hearing date available after the 75-day period that commences on the date of this hearing. If a Chapter 13 plan has not been confirmed by such date, the court may dismiss the case on the trustee's motion. See 11 U.S.C. § 1307(c)(1).

11. [17-12991](#)-A-13 TOMMY/JANET SVARE  
[MDE](#)-1  
DEUTSCHE BANK NATIONAL TRUST  
COMPANY/MV  
ROBERT WILLIAMS/Atty. for dbt.  
MARK ESTLE/Atty. for mv.

OBJECTION TO CONFIRMATION OF  
PLAN BY DEUTSCHE BANK NATIONAL  
TRUST COMPANY  
9-1-17 [[13](#)]

### **Tentative Ruling**

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

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

**Disposition:** Sustained

**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.

### **SECTION § 1325(a)(5)(b)(ii) AND IMPROPER CLASSIFICATION OF SECURED CLAIM**

Deutsche Bank National Trust Company's objection to confirmation is made on grounds that the plan incorrectly classifies its secured claim. The court takes judicial notice of the debtor's chapter 13 plan and its contents, which appear on its docket. Fed. R. Evid. 201(b)(2). The plan places the secured creditor's claim in Class 4, yet the claim is in default and includes a pre-petition arrearage.

Given that this creditor has filed a proof of claim, its claim is deemed allowed until a party in interest objects. 11 U.S.C. § 502(a). As a result, the claim is delinquent based prepetition arrearage set forth on the filed proof of claim.

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 at least equal to the allowed amount of such claim, or (3) the plan's providing for surrender of the collateral to the secured claim holder. See 11 U.S.C. § 1325(a)(5).

By placing this secured claim in Class 4, the plan contravenes § 1325(a)(5). The allowed secured claim in this case includes the prepetition arrearage shown on the proof of claim, which amount was past due on the petition date. Section 1325(a)(5)(B)(ii) read together with § 1322(b)(5) requires that the plan provide for payment in full of the delinquent prepetition arrearage as part of the allowed amount of the secured claim. See *id.* §§ 1325(a)(5)(B)(ii), 1322(b)(5) (permitting the curing of any default and ongoing maintenance payments on long-term debt maturing after the plan's term).

Because the plan fails to provide for cure of the prepetition arrearage, the plan does not provide payment distributions on account of this secured claim that are at least equal to the allowed amount of

such claim. Further, the secured claim holder does not accept the plan, and Class 4 is not a mechanism for surrender.

In addition, this district's form chapter 13 plan provides that "Class 4 claims mature after the completion of this plan, are not in default, and are not modified by this plan." Form Chapter 13 Plan, EDC 3-080. Claims that are in default and mature after the completion of the plan's term are to be placed in Class 1. Therefore, placing the claim in Class 4 also contravenes the terms of this district's form plan. Class 4 of the plan indicates payment of only the ongoing post-petition mortgage installments on the Class 4 claim and not the pre-petition arrearage. Therefore, this claim must be placed in Class 1.

#### **CIVIL MINUTE ORDER**

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

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

Secured Creditor Deutsche Bank National Trust Company'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 plan confirmation.

IT IS FURTHER ORDERED that a Chapter 13 plan must be confirmed no later than the first hearing date available after the 75-day period that commences on the date of this hearing. If a Chapter 13 plan has not been confirmed by such date, the court may dismiss the case on the trustee's motion. See 11 U.S.C. § 1307(c)(1).