

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

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

**DAY: TUESDAY**  
**DATE: OCTOBER 18, 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. [22-22002](#)-A-13     **IN RE: IMELDA DEL ROSARIO**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK  
9-28-2022    [\[33\]](#)

MATTHEW DECAMINADA/ATTY. FOR DBT.

### **Tentative Ruling**

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

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

**Disposition:** Sustained and confirmation denied

**Order:** Civil minute order

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

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

### **PLAN FEASIBILITY**

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

### Attorney Fees

The Chapter 13 trustee objects to confirmation of the debtor's plan as the attorney fees are not properly provided for in the plan. While the amounts to be paid are properly indicated, a monthly payment amount is not designated. This prevents the trustee from calculating the feasibility of the plan on a monthly basis. The trustee has indicated that absent a plan modification the balance of attorney fees due will be paid at the end of the plan after other creditors are paid.

### Third Party Contributions

The feasibility of the plan is contingent upon support paid by a third party. See Schedule I, ECF No. 14. There is no declaration by the third party of his willingness and ability to pay \$900.00 per month for the duration of the plan. Absent this information the plan is not feasible under 11 U.S.C. § 1325(a)(6).

### **11 U.S.C. § 1325(b)**

The trustee is unable to determine whether the debtor's plan satisfies the best-efforts test of 11 U.S.C. § 1325(b).

### Form 122C-1

It is unclear if Form 122C-1 is properly completed. The debtor has income from several sources, yet the form provides income information from all sources combined into one lump sum instead of itemizing the income sources. See Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period, ECF No. 16. The trustee requests that the form be amended, and the various forms of income be listed by source so that he can determine if the form has been properly completed, and that the debtor is contributing all funds required to the plan.

### Schedule I

Schedule I appears to be incorrectly completed. The pay advices provided to the trustee show a significant discrepancy between the monthly amount received from her employment and the amounts indicated in Schedule I. It is also unclear if this sum has been properly accounted for in the Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period.

The debtor acknowledged at the 341 meeting that she is paid weekly and not monthly, thus it appears that the employment income amounts are incorrect and understated in Schedule I.

The court will sustain all the trustee's objections to confirmation and deny confirmation of the debtor's plan.

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

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

Rule 9036-1 (electronic service) and Rule 7005-1 (requiring attorneys and trustees to use a standardized Certificate of Service, EDC 7-005).

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

While its use is not yet mandatory David P. Cusick, the Chapter 13 Trustee, used Form EDC 7-005, in memorializing the service of documents in this motion and filed a Certificate of Service, ECF No. 36. That form was signed "Yvette Sanders" who apparently is a paraprofessional employed by the trustee. With one exception the Certificate of Service represents proper use of the new local rules and form Certificate of Service. Section 4 properly lists the documents served. Section 5 properly identifies the parties served with the objection. However, Section 6 is incorrectly completed. The objection to confirmation requires service under Fed. R. Civ. P. 5. Therefore, Box 6B is pertinent and the 6A designation is incorrect. The attachment showing parties served should be labeled 6B2. These errors are not fatal in this case as the trustee properly served all required parties, including the parties requesting special notice in this case. The trustee and Ms. Sanders are to be commended on their application of the new local rules. The court appreciates the trustee's voluntary use of Form EDC 7-005.

#### **CIVIL MINUTE ORDER**

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

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

The 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.

2. [22-22002](#)-A-13     **IN RE: IMELDA DEL ROSARIO**  
[MJD-1](#)

OBJECTION TO CLAIM OF LVNV FUNDING, LLC, CLAIM NUMBER 1  
8-31-2022    [\[26\]](#)

MATTHEW DECAMINADA/ATTY. FOR DBT.  
TRUSTEE NON-OPPOSITION

**Final Ruling**

**Objection:** Debtor's Objection to Claim

**Notice:** LBR 3007-1, 9014-1(f)(1); written opposition required

**Disposition:** Continued to November 8, 2022, at 9:00 a.m.

**Order:** Civil minute order

The debtor objects to the claim of LVNV Funding, LLC, Claim No. 1.

**NOTICE**

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

Objection to Claim

This objection is brought pursuant to Fed. R. Bankr. P. 3007 which requires that the objecting party serve the objection and supporting papers on the affected party. However, the court has directed that a creditor requesting special notice also be served with the moving papers as follows.

Rules 9013 and 9007

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

(a) the trustee or debtor in possession and on those entities specified by these rules; or

(b) *the entities the court directs if these rules do not require service or specify the entities to be served.*

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

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

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

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

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

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

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

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

In this case creditor U.S. Bank National Association, has filed a request for special notice. *See Request for Notice*, ECF No. 11. Thus, the debtor is bound to serve the objection to claim on creditors who have filed requests for special notice.

The Certificate of Service filed in support of this objection does not list the creditor as a party served with the notice as required. *See Certificate of Service*, ECF No. 29.

The court will continue the hearing on the objection to claim to allow for notice to the special notice party.

**LIMITED NOTICING AND STANDARDIZED CERTIFICATE OF SERVICE**

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

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

While its use is not yet mandatory Mathew DeCaminada used Form EDC 7-005, in memorializing the service of documents in this objection and filed a Certificate of Service, ECF No. 29. The Certificate of Service generally represents the proper use of the new local rules and form Certificate of Service. Section 4 properly lists the documents served. The certificate fails to indicate service to special notice creditors as discussed above in the court's ruling. Attachment 5 is improperly labeled and should be indicated as Attachment 6A. However, the claimant was properly served with the objection. The court appreciates counsel's voluntary use of Form EDC 7-005.

#### **CIVIL MINUTE ORDER**

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

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

The debtor's objection to claim 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 hearing on the objection is continued to November 8, 2022, at 9:00 a.m. Not later than October 25, 2022, the debtor shall file and serve the objection and an amended notice of hearing on the objection to all parties which have filed a special notice in this case.

3. [22-22002](#)-A-13      **IN RE: IMELDA DEL ROSARIO**  
[RMP-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY CREDITOR REAL TIME  
RESOLUTIONS, INC.  
9-28-2022    [\[37\]](#)

MATTHEW DECAMINADA/ATTY. FOR DBT.  
RENEE PARKER/ATTY. FOR MV.

#### **Final Ruling**

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

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

**Disposition:** Continued to November 8, 2022, at 9:00 a.m.

**Order:** Civil minute order

Real Time Resolutions, Inc. has objected to confirmation of the debtor's plan. Because of the procedural issues discussed below the court will continue the hearing on the objection.

## NOTICE

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

### Objection to Confirmation

This objection is brought pursuant to Fed. R. Bankr. P. 9014 which requires that notice and an opportunity to be heard shall be "afforded the party against whom relief is sought." An objection to the confirmation of a Chapter 13 plan is governed by Fed. R. Bankr. P. 2002(b).

### Rules 9013 and 9007

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

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

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

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

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

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

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

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



*motion. However, the motion and supporting papers shall be served on those parties who have requested special notice and those who are directly affected by the requested relief.*

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

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

In this case creditor U.S. Bank, N.A. filed a request for special notice. See *Request for Notice*, ECF No. 11. Thus, the objecting creditor is bound to serve the objection to confirmation on creditors who have filed requests for special notice.

The Certificate of Service filed in support of this motion by the objecting creditor does not list the above-named creditor as a party served with the notice as required. See Certificate of Service, ECF No. 40.

The court will continue the hearing on his objection to confirmation to allow for notice to the special notice parties.

#### **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 objection, attorney Renee Parker filed a Certificate of Service, ECF No. 40. With some exceptions the Certificate of Service represents generally the proper use of the new local rules and form Certificate of Service. First, Section 4 is incomplete and there is not an Attachment 4 which properly identifies the documents served. In this case the omission is not fatal as the documents are listed on page 1 of the certificate. Second, the certificate fails to indicate notice to special notice creditors as indicated above in the court's ruling. Third, counsel has used an outdated version of the certificate dated 6/22. The form has been updated and a current version is available on the court's website. Fourth, while the United States Trustee was properly served the completion of the certificate regarding service of the UST is improper. Service upon the UST is not required under Fed. R. Bankr. P 7004 but rather Fed. R. Civ. P. 5. Thus, Box 6B2 should have been checked for service upon this party. Attachment 6(B)(3) properly identifies the parties which were served with the

objection. The court appreciates counsel's voluntary use of the new form certificate.

#### **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 hearing on the objection is continued to November 8, 2022, at 9:00 a.m. Not later than October 25, 2022, the objecting creditor shall file and serve the objection and a notice of continued hearing on the objection to the debtor and all parties which have filed a special notice in this case.

4. [19-26305](#)-A-13     **IN RE: FRANCISCO QUINTANA**  
[DPC-1](#)

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

PETER MACALUSO/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**No Ruling**

5. [21-22506](#)-A-13     **IN RE: KEVIN KENNEDY**  
[DPC-2](#)

OBJECTION TO CLAIM OF STACEY MACDONALD, CLAIM NUMBER 7  
8-30-2022     [\[40\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.

### **Final Ruling**

**Objection:** Objection to Claim

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

**Disposition:** Overruled without prejudice

**Order:** Civil minute order

The Chapter 13 trustee objects to the priority classification of the claim filed by Stacey MacDonald, Claim No. 7.

On July 27, 2022, the claimant filed an attachment to her amended claim. Attachment 2 provided that the new address for the claimant is: Unit 8400, Box B, DPO, AE 09498. See Claim No. 7, Attachment 2.

The trustee's objection refers to the address of the claimant as follows:

The Creditor address used in the proof of claim  
reflects "UNIT 8400 BOX B DPO AE 0948."

Objection, ECF No. 40, 2:20-21.

The certificate of service filed in support of the trustee's objection indicates that the claimant was served as follows: STACEY MACDONALD UNIT 8400 BOX B DPO AE 0948. See Certificate of Service, ECF No. 44, 2:9-11.

The address identified by the trustee in the motion and in the certificate of service is incorrect. It contains an incomplete zip code. As the claimant was not served at the correct address the court will overrule the trustee's objection without prejudice.

### **CIVIL MINUTE ORDER**

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

The trustee's objection to claim has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the objection is overruled without prejudice.

6. [22-22110](#)-A-13     **IN RE: MANUEL SAUCEDO GONZALEZ AND REGINA SAUCEDO**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
9-20-2022    [\[24\]](#)

9/22/22 FILING FEE PAID \$32

**Final Ruling**

As the fee has been paid in full, the order to show cause is discharged. The case will remain pending.

7. [22-21912](#)-A-13     **IN RE: PHILLIP GENTRY**  
[DPC-1](#)

OBJECTION TO DISCHARGE BY DAVID P. CUSICK  
9-12-2022    [\[14\]](#)

MOHAMMAD MOKARRAM/ATTY. FOR DBT.

**Final Ruling**

**Motion:** Objection to Discharge

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

**Disposition:** Sustained

**Order:** Civil minute order

**Instant Petition Filed:** August 1, 2022

**Previous Chapter:** 7

**Previous Petition Filed:** April 6, 2021

**Previous Discharge:** July 19, 2022

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

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

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

11 U.S.C. § 1328(f)(1)) provides:

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

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

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

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

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

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

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

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

Relatively unambiguously, new §1328(f)((1) states mandatorily that the court "shall not" grant a discharge if the debtor received a discharge in a Chapter 7, 11 or 12 case "filed...during the 4-year period preceding the date of the order for relief under this chapter." The counting rule here is clear: the 'order for relief under this chapter' would be the date of filing the current Chapter 13 petition; the four-year period would run from the date of filing of the prior case in which the debtor received a discharge. In other words, the four-year bar to successive discharges runs from the *filing* of a prior Chapter 7 (11 or 12) case to the *filing* of the current Chapter case."

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

Because less than 4 years has passed since the filing of debtor(s) previous chapter 7 case on April 6, 2021, the debtor is not eligible for a discharge in this chapter 13 case. The court will sustain the trustee's objection to discharge.

## **CIVIL MINUTE ORDER**

The court finds that the debtor is not entitled to a discharge in this case. The court shall issue a civil minute order that conforms substantially to the following form:

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

The trustee's Objection to Discharge has been presented to the court. Having entered the default of the debtor for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the objection,

IT IS ORDERED that the objection is sustained; and

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

8. [22-21422](#)-A-13     **IN RE: MARTIN/MONIQUE ARCHULETA**  
[MWB-1](#)

MOTION TO CONFIRM PLAN  
8-24-2022    [\[22\]](#)

MARK BRIDEN/ATTY. FOR DBT.  
TRUSTEE NON-OPPOSITION

### **Final Ruling**

**Matter:** Motion to Confirm Chapter 13 Plan

**Notice:** LBR 9014-1(f) (1)

**Disposition:** Denied without prejudice

**Order:** Civil minute order

The debtors seek confirmation of their amended Chapter 13 plan. The Chapter 13 trustee has filed a non-opposition to the motion, ECF No. 35.

The hearing on this motion was originally set for an incorrect date. On August 25, 2022, the debtors filed an Amended Notice of Motion setting the date and time of the hearing for October 18, 2022, at 9:00 am. See Amended Notice of Motion, ECF No. 27. The Notice of Motion is neither dated nor signed which contravenes LBR 9004-1(c).

Moreover, the Certificate of Service filed in support of the Amended Notice of Motion is incomplete. The Certificate of Service fails to include the attachment which is the Clerk's Mailing Matrix. Without the attachment it is unclear if all parties were served with the amended notice of motion as required. See Certificate of Service, ECF No. 28.

The court will deny the motion without prejudice.

## CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the motion is denied without prejudice.

9. [22-20635](#)-A-13     **IN RE: MARIA LUPERCIO**  
[CYB-1](#)

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

CANDACE BROOKS/ATTY. FOR DBT.

### Final Ruling

**Motion:** Confirm Chapter 13 Plan

**Notice:** Continued from August 30, 2022

**Disposition:** Denied

**Order:** Civil minute order

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

The hearing on this motion was continued to allow the debtor and creditor Wells Fargo Bank, N.A. to confer regarding the debtor's objection to claim (CYB-2). The Chapter 13 trustee opposes the plan contending that the proposed plan misclassifies the claim of Wells Fargo Bank, N.A. The court agrees with the trustee.

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).

### MORTGAGE ARREARS

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

The Chapter 13 trustee objects to confirmation, contending that since the debtor was delinquent on her residential home mortgage payment on the date of the petition that her classification of that claim in Class 4 (direct payment) is improper.

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

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

Here, the plan places the secured creditor's claim in Class 4, yet the claim is in default and includes a pre-petition arrearage in the amount of \$5,039.65. Compare Claim No. 3 (reflecting delinquency) with 11 U.S.C. 502(a) (deemed allowance).

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

Thus, bankruptcy courts have been afforded the discretion to make the determination of when direct payments may or may not be appropriate based upon the confirmation requirements of § 1325, policy reasons, and the factors set forth by case law, local rules or guidelines. *Lopez*, 372 B.R. at 46-47 ("Reflecting the discretion granted by the Code, different courts and different circuits have different rules on the permissibility of direct payment, a fact unchanged by or since [*Fulkrod v. Barmettler (In re Fulkrod)*, 126 B.R. 584 (9th Cir. BAP 1991) *aff'd sub. nom.*, *Fulkrod v. Savage (In re Fulkrod)*, 973 F.2d 801 (9th Cir.1992)].")

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

Second, at least where a residential mortgage is delinquent on the petition date, merely providing in the plan that the debtor will pay



the claim directly does not satisfy § 1325(a)(5). As Judge Lundin commented:

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

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

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

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

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

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

*...*

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

Chapter 13 Plan § 3.07, EDC 3-080.

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

*Class 4 includes all secured claims paid directly by Debtor or third party. Class 4 claims mature after the*

completion of this plan, are not in default, and are not modified by this plan. These claims shall be paid by Debtor or a third person whether or not a proof of claim is filed[, ] or the plan is confirmed.

*Id.* at § 3.10.

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

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

#### **CIVIL MINUTE ORDER**

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

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

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

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

10. [22-20635](#)-A-13     **IN RE: MARIA LUPERCIO**  
[CYB-2](#)

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

CANDACE BROOKS/ATTY. FOR DBT.  
STIPULATION, ECF NO. 50

### **Final Ruling**

**Objection:** Objection to Allowance of Claim

**Notice:** Continued from August 30, 2022

**Disposition:** Overruled

**Order:** Civil Minute Order

### **BACKGROUND**

The debtor's objection to the claim of Wells Fargo Bank, N.A. is brought on grounds that the claim erroneously lists pre-petition mortgage arrears. The debtor has provided for the respondent's claim in Class 4 of the proposed Chapter 13 plan. Wells Fargo Bank N.A. filed a response requesting time to audit the case to determine if arrears were owed as of the date the petition was filed.

This case was filed on March 16, 2022. The court takes judicial notice of the claims register. Fed. R. Evid. 201(b)(2), (c). Wells Fargo Bank, N.A. filed its claim on March 22, 2022. The claim states that \$5,039.65 is owed in mortgage arrears as of the date of the petition.

### **STIPULATION**

The parties submitted a stipulation to the court which was intended to resolve the objection raised by the debtor. See Stipulation, ECF No. 50. The court declined to approve the Stipulation for the following reasons.

First, the stipulation acknowledges that the amount claimed is correct and that arrears of \$5,039.65 were owed on the petition date. *Id.* 2:12-14. As such, the arrears must be paid through the Chapter 13 Plan in Class 1. The court has discussed this in its ruling on the motion to confirm plan (CYB-1).

Second, the Stipulation fails to include the approval and signature of the Chapter 13 trustee. As the administrator of the plan the trustee is a necessary party to the stimulation.

Third, the Claim filed by Wells Fargo Bank, N. A. still appears on the court's docket, and still provides for the pre-petition mortgage arrearages.

The court will overrule the objection.

## CIVIL MINUTE ORDER

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

The debtor's Objection to the Claim of Wells Fargo Bank, N.A. has been presented to the court. Having considered the objection together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the objection is overruled.

11. [22-21943](#)-A-13      **IN RE: CHRISTOPHER KEENER**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK  
9-29-2022    [\[27\]](#)

PAULDEEP BAINS/ATTY. FOR DBT.

### Final Ruling

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

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

**Disposition:** Continued to November 8, 2022, at 9:00 a.m.

**Order:** Civil minute order

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

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

### NOTICE

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

### Objection to Confirmation

This objection is brought pursuant to Rule 9014 which requires that notice and an opportunity to be heard shall be "afforded the party against whom relief is sought." Moreover, an objection to the confirmation of a Chapter 13 plan is governed by Fed. R. Bankr. P.

2002(b). The court has determined that notice shall be given to parties who have filed a request for special notice as follow.

Rules 9013 and 9007

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

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

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

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

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

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

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

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

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

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

In this case creditor U.S. Bank National Association, has filed a request for special notice. See *Request for Notice*, ECF No. 8.

Thus, the trustee is bound to serve his objection to confirmation on creditors who have filed requests for special notice.

The Certificate of Service filed in support of this motion by the chapter 13 trustee does not list the creditor as a party served with the notice as required. See Certificate of Service, ECF No. 30.

The court will continue the hearing on his objection to confirmation to allow for notice to the special notice party.

#### **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 hearing on the objection is continued to November 8, 2022, at 9:00 a.m. Not later than October 25, 2022, the Chapter 13 trustee shall file and serve the objection and an amended notice of hearing on the objection to all parties which have filed a special notice in this case.

12. [22-22251](#)-A-13     **IN RE: CELESTE RASMUSSEN**  
[RTD-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
9-29-2022    [\[16\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.  
ROXANNE DANERI/ATTY. FOR MV.  
SACRAMENTO CREDIT UNION VS.

### **Tentative Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 2015 Mercedes Benz C300

**Petition Filed:** September 2, 2022

**Previous Petition Filed:** September 18, 2020

**Previous Petition Dismissed:** August 26, 2022

**Current Plan Status:** Unconfirmed

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

Sacramento Credit Union seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a). Alternatively, the movant seeks an order confirming that the automatic stay has expired under 11 U.S.C. § 362(c)(3).

### **RELIEF FROM STAY**

Section 362(d)(1) authorizes stay relief for cause shown. 11 U.S.C. § 362(d)(1). The debtor is obligated to make debt payments to the moving party pursuant to a loan contract that is secured by a security interest in the debtor's vehicle described above. The debtor has defaulted on the loan as 1 postpetition payment is past due. The total postpetition delinquency is approximately \$392.49.

Additionally, the debtor has failed to prove proper registration of the vehicle which makes it illegal to operate the vehicle legally. This is the debtor's second chapter 13 plan in 3 years. The previous plan provided for vehicle payments through the Chapter 13 plan, but the movant has received no payments from the debtor since the dismissal of the prior case on August 26, 2022.

### **CONFIRMATION OF THE STAY'S TERMINATION**

If a debtor who files a petition has had one bankruptcy case pending within the preceding one-year period that was dismissed, then the automatic stay terminates with respect to the debtor on the 30th day after the filing of the later case, unless the stay is extended. 11 U.S.C. § 362(c)(3)(A). 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 *id.* § 362(c)(3)(B). And a party in interest may request an order confirming that no stay is in effect. *Id.* § 362(j) (authorizing the court to issue orders confirming the termination of the automatic stay).

In this case, the debtor has had 1 case pending within the preceding 1-year period that was dismissed. More than 30 days have passed since the petition date. No motion to extend the automatic stay was filed by the debtor. The stay has terminated. To the extent it is applicable the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived.

### **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).

In support of this application, attorney Roxanne T. Daneri filed a Certificate of Service, ECF No. 23. The Certificate of Service represents a textbook example of the proper use of the new local rules and form Certificate of Service. Section 4 properly lists the documents served. Section 5 properly indicates the parties served. Section 6(A)(1) is properly supported by an attachment indicating the parties served by mail. Section 6(B)(1) properly attaches the Clerk's Official Matrix of Registered Users of the Court's electronic-filing system. Ms. Daneri is to be commended on her precise and skillful application of the new local rules.

### **CIVIL MINUTE ORDER**

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

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

Sacramento Credit Union's motion for relief from the automatic stay or motion to confirm the termination of the stay 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 automatic stay is no longer in effect with respect to the debtor in this case. To the extent it is applicable the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

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

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

CARL GUSTAFSON/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### **Final Ruling**

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

**Notice:** Continued from August 30, 2022

**Disposition:** Overruled and plan confirmed

**Order:** Civil Minute Order

The hearing on the trustee's objection to confirmation was continued from August 30, 2022, to allow the parties to resolve the objections raised by the trustee.

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).

### **STATUS REPORT**

On September 27, 2022, the parties filed a joint status report. See Status Report, ECF No. 33.

In the status report the parties state that all matters raised in the trustee's objection to confirmation have been resolved with minor changes to be reflected in the Order Confirming the Plan.

The debtor shall submit an appropriate Order Confirming the Plan to the trustee for review and approval. The Order shall be consistent with the terms outlined in the Status Report and this ruling.

## **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 Chapter 13 Plan is confirmed.

IT IS FURTHER ORDERED that the debtor shall submit an appropriate Order Confirming the Plan which has been signed by the Chapter 13 trustee. The order shall provide for the terms contained in the Status Report, ECF No. 33.

14. [22-21563](#)-A-13     **IN RE: JOLENE/AARON SILVA**  
[PGM-1](#)

MOTION TO CONFIRM PLAN  
9-5-2022    [[33](#)]

PETER MACALUSO/ATTY. FOR DBT.  
DEBTORS DISMISSED: 09/28/2022

### **Final Ruling**

This case was dismissed on September 28, 2022. This motion is removed from the calendar as moot. No appearances are required.

15. [22-22263](#)-A-13     **IN RE: JARVIS GARNER**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
9-20-2022    [[13](#)]

### **Final Ruling**

As an Order was filed on September 27, 2022, ECF No. 24, that grants the Debtor's Motion to pay the filing fee in installments. The order to show cause is discharged. The case will remain pending.

16. [18-25565](#)-A-13     **IN RE: KACEE PEREZ**  
[DPC-5](#)

MOTION TO DISMISS CASE  
9-8-2022    [\[73\]](#)

RICHARD STURDEVANT/ATTY. FOR DBT.  
DAVID CUSICK/ATTY. FOR MV.  
RESPONSIVE PLEADING

### **Final Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

**Opposition Due:** October 4, 2022

**Opposition Filed:** October 4, 2022 - timely

**Cause:** 11 U.S.C. § 1307(c)(1), (6) - Plan Delinquency

**Best Interests of Creditors/Estate:** Dismiss

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 confirmed plan. The trustee contends that the plan payments are delinquent in the amount of \$2,953.74, with another payment of \$1,409.74 due September 25, 2022.

The debtor has filed a timely opposition. See Opposition, ECF No. 79. The opposition is not accompanied by any evidence either by declaration or exhibits. The Opposition states as follows:

Debtor hereby opposes Trustee's Motion to Dismiss for the following reasons: 1) Debtor has become current on her plan payments. 2) Debtor requests that the court deny the motion.

*Id.*, 1:23-24, 2:1-2.

### **LBR 9014-1(f)(1)(B)**

Opposition. Opposition, if any, to the granting of the motion shall be in writing and shall be served and filed with the Court by the responding party at least fourteen (14) days preceding the date or continued date of the hearing. *Opposition shall be accompanied by evidence establishing its factual allegations.* Without good cause, no party shall be heard in opposition to a motion at oral argument if written opposition to the motion has not been timely filed. Failure of the responding party to timely file written opposition may be deemed a waiver of any opposition to the granting of the motion or may result in the imposition of sanctions.

LBR 9014-1(f)(1)(B) (emphasis added).

The opposition does not comply with LBR 9014-1(f)(1)(B). A declaration is required to prove the contentions in the opposition and to provide additional relevant information. For example, there is no evidence indicating when the debtor delivered the payment to the chapter 13 trustee, the amount of any payments tendered, or the method of delivery.

The court gives no weight to an opposition which fails to provide sworn testimony by the party opposing the motion. Unsworn statements by counsel are not evidence and will not be considered.

**11 U.S.C. § 1307(c)**

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

...

11 U.S.C. § 1307(c).

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

**CIVIL MINUTE ORDER**

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

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

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

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. Delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

17. [22-21365](#)-A-13     **IN RE: RAFAEL/VIANA LARA**  
[KMB-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY BOSCO CREDIT, LLC  
9-20-2022    [\[63\]](#)

KIM BEATON/ATTY. FOR DBT.  
KELLI BROWN/ATTY. FOR MV.

### **Final Ruling**

**Motion:** Objection to Confirmation of Plan

**Notice:** LBR 9014-1(f)(2)

**Disposition:** Continued to November 22, 2022, at 9:00 a.m.

**Order:** Civil minute order

Bosco Credit, LLC, opposes confirmation of the debtors' First Amended Plan. This objection is incorrectly filed as such. Instead, it should be filed as opposition to the debtors' Motion to Confirm Amended Plan (KMB-2). See LBR 3015-1(d)(1).

The debtors' motion to confirm the amended plan is already set for hearing on November 22, 2022, at 9:00 a.m. The court will continue the hearing on this matter to coincide with the hearing on the debtors' proposed plan.

Counsel is encouraged to review LBR 3015-1. Future failure to properly comply with the Eastern District's Local Bankruptcy Rules may result in the denial of relief or the imposition of sanctions. LBR 1001-1(g).

### **CIVIL MINUTE ORDER**

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

IT IS ORDERED that the hearing on the objection is continued to November 22, 2022, at 9:00 a.m.

18. [21-22570](#)-A-13     **IN RE: NENITA ANTONIO**  
[TJW-4](#)

MOTION TO CONFIRM PLAN  
9-13-2022    [\[85\]](#)

TIMOTHY WALSH/ATTY. FOR DBT.  
TRUSTEE NON-OPPOSITION

### **Final Ruling**

**Motion:** Confirm Amended Chapter 13 Plan

**Notice:** LBR 9014-1(f)(1)

**Disposition:** Continued to November 22, 2022, at 9:00 a.m.

**Order:** Civil minute order

The debtor seeks confirmation of her amended chapter 13 plan. The chapter 13 trustee has filed a non-opposition to the plan, ECF No. 95.

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

### **PLAN FEASIBILITY**

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

### Schedules I and J

The debtor has not supported the plan by filing recently amended Schedules I and J. The most recently filed Schedule J was filed on November 10, 2021, nearly 11 months ago, ECF No. 26. The most

recently filed Schedule I was filed at the inception of the case on July 15, 2021, ECF No. 1. Without current income and expense information the court and the chapter 13 trustee are unable to determine whether the plan is feasible or whether the plan has been proposed in good faith. See 11 U.S.C. § 1325(a)(3), (6).

The court will continue this matter to allow the debtor to augment the evidentiary record and file supplemental Schedules I and J. However, counsel is cautioned that the court considers current budget schedules to be part of a debtor's prima facie case for confirmation of a Chapter 13 plan. In the future the schedules should be filed at the outset of a motion and not in response to the court's ruling or a party's opposition.

#### **CIVIL MINUTE ORDER**

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

IT IS ORDERED that the debtor's Motion to Confirm Plan is continued to November 22, 2022, at 9:00 a.m. No later than November 1, 2022, the debtor shall file and serve Schedules I and J in support of her plan.

IT IS FURTHER ORDERED that not later than November 15, 2022, the chapter 13 trustee shall file a Status Report indicating his review of the evidence filed by the debtor and his position regarding confirmation of the debtor's plan.

19. [22-22071](#)-A-13     **IN RE: SERGEY/ELENI MALKO**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK  
9-28-2022    [\[21\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.

#### **Final Ruling**

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

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

**Disposition:** Continued to November 22, 2022, at 9:00 a.m.

**Order:** Civil minute order

The Chapter 13 trustee has objected to confirmation of the debtors' plan.

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

## NOTICE

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

### Objection to Confirmation

This objection is brought pursuant to Rule 9014 which requires that notice and an opportunity to be heard shall be "afforded the party against whom relief is sought." An objection to the confirmation of a Chapter 13 plan is governed by Fed. R. Bankr. P. 2002(b).

However, the court has directed that parties filing a request for special notice shall also be served with notice of motions and objections.

### Rules 9013 and 9007

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

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

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

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

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

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



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

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

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

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

In this case creditors AIS Portfolio Services, LP; Nationstar Mortgage LLC; and Ally Bank filed requests for special notice. See *Request for Notice*, ECF Nos. 10, 14, 19. Each of these requests were filed with the court prior to the filing of the trustee's objection on September 28, 2022. Thus, the trustee is bound to serve his objection to confirmation on creditors who have filed requests for special notice.

The Certificate of Service filed in support of this motion by the chapter 13 trustee does not list the above-named creditors as parties served with the notice as required. See Certificate of Service, ECF No. 24.

The court will continue the hearing on the trustee's objection to confirmation to allow for notice to the special notice parties.

**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 hearing on the objection is continued to November 22, 2022, at 9:00 a.m. Not later than October 25, 2022, the Chapter 13 trustee shall file and serve the objection and a notice of continued hearing of the objection to the debtor and all parties which have filed a special notice in this case.

IT IS FURTHER ORDERED that not later than November 8, 2022, the debtor shall file and serve written opposition, if any, to the trustee's objection. Should the debtor fail to file an opposition the court will rule on the trustee's objection without further notice or hearing.

20. [22-21976](#)-A-13     **IN RE: STEPHEN GLOVER**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK  
9-28-2022    [\[21\]](#)

### **Tentative Ruling**

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

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

**Disposition:** Sustained and confirmation denied

**Order:** Civil minute order

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

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

### **PLAN FEASIBILITY**

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

and make all payments thereunder.")." *In re Buccolo*, 397 B.R. 527, 530 (Bankr. D.N.J. 2008), *aff'd*, 2009 WL 2132435 (D.N.J. July 13, 2009).

#### Plan Delinquency

The trustee indicates that the plan payments are delinquent in the amount of \$78.00 with an additional plan payment due October 25, 2022. The plan cannot be confirmed if the plan payments are not current.

#### Failure to Provide Income Information

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

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

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

#### Schedules I and J

Schedules I and J do not support the plan payment proposed by the debtor. The schedules show the debtor's net monthly income as negative \$1,643.36 per month, (emphasis added). See ECF No. 14. As such the debtor has failed to prove his ability to tender any plan payment, and the proposed plan is not feasible under 11 U.S.C § 1325(a)(6).

#### **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.

All debtors are required to attend the meeting of creditors. The debtor did not attend the scheduled meeting on September 22, 2022.

Thus, the trustee was unable to examine the debtor regarding the issues raised in this motion.

The court will sustain the objections of the Chapter 13 trustee. Given the nature of the objections sustained and which the court has discussed in its ruling, it need not reach the other issues raised in the trustee's objection.

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

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

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

While its use is not yet mandatory David P. Cusick, the Chapter 13 Trustee, used Form EDC 7-005, in memorializing the service of documents in this motion and filed a Certificate of Service, ECF No. 24. That form was signed "Yvette Sanders" who apparently is a paraprofessional employed by the trustee. With one exception the Certificate of Service represents proper use of the new local rules and form Certificate of Service. Section 4 properly lists the documents served. Section 5 properly identifies the parties served with the objection. However, Section 6 is incorrectly completed. The objection to confirmation requires service under Fed. R. Civ. P. 5. Therefore, Box 6B is pertinent and the 6A designation is incorrect. The attachment showing parties served should be labeled 6B2. These errors are not fatal in this case as the trustee properly served all required parties, including the parties requesting special notice in this case. The trustee and Ms. Sanders are to be commended on their skillful application of the new local rules. The court appreciates the trustee's voluntary use of Form EDC 7-005.

#### **CIVIL MINUTE ORDER**

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

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

The 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.

21. [22-21177](#)-A-13     **IN RE: JENELL SINGLETON**  
[MMM-1](#)

MOTION TO MODIFY PLAN  
9-12-2022    [\[18\]](#)

MOHAMMAD MOKARRAM/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 in the amount of \$250.00 under the proposed modified plan. The plan cannot be confirmed if the plan payments are not current.

### Plan Overextension

The trustee calculates that the plan will take 47 months to complete. This exceeds the maximum length of 36 months proposed under the modified plan.

Therefore, the plan is not feasible under 11 U.S.C. § 1325(a)(6).

### **DEBTOR REPLY**

On October 7, 2022, the debtor filed a reply. See ECF No. 27. The reply states that the debtor has brought the plan payments current, and the debtor has submitted a copy of the National Datacenter Ledger as an exhibit evidencing payment. See Exhibit, ECF No. 28.

The debtor also acknowledges the plan overextension and offers to extend the length of the plan to 47 months in the order confirming the plan. See ECF No. 27, 1:19-20. The 11-month extension may not be accomplished by order as all parties were noticed of the proposed plan and its current provisions. The proposed plan provides:

The monthly plan payments will continue for 36 months unless all allowed unsecured claims are paid in full within a shorter period of time. If necessary to complete the plan, monthly payments *may continue for an additional 6 months*, but in no event shall monthly payments continue for more than 60 months.

Chapter 13 Plan, ECF No. 21, Section 2.03 (emphasis added).

Therefore, the plan term may not be extended by 11 months in the order as proposed. The court will deny the motion as the plan is not feasible under 11 U.S.C. § 1325(a)(6).

### **CIVIL MINUTE ORDER**

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

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

The debtor's motion to 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.

22. [22-21984](#)-A-13     **IN RE: ANDREW KNIERIEM**  
[AP-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DEUTSCHE BANK NATIONAL  
TRUST COMPANY  
9-29-2022    [\[30\]](#)

WENDY LOCKE/ATTY. FOR MV.

### **Final Ruling**

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

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

**Disposition:** Overruled as moot

**Order:** Civil minute order

Deutsche Bank National Trust Company has objected to confirmation of  
the debtor's plan.

### **THE CHAPTER 13 PLAN HAS BEEN SUPERSEDED**

Chapter 13 debtors may modify the plan before confirmation. 11  
U.S.C. § 1323(a). If the debtor files a modification of the plan  
under § 1323, the modified plan becomes the plan and supersedes the  
prior plan. 11 U.S.C. § 1323(b). Filing a modified plan renders  
moot any prior plan filed. On October 14, 2022, the debtor filed an  
Amended Plan, ECF No. 35. Because an amended plan has superseded  
the plan to which the creditor objects, the court will overrule the  
objection as moot.

### **NOTICE**

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

### Objection to Confirmation

This objection is brought pursuant to Fed. R. Bankr. P. 9014 which  
requires that notice and an opportunity to be heard shall be  
"afforded the party against whom relief is sought." An objection to  
the confirmation of a Chapter 13 plan is governed by Fed. R. Bankr.  
P. 2002(b).

However, the court has directed that notice of motions and  
objections shall be served on parties who file a request for special  
notice as follows.

### Rules 9013 and 9007

A request for an order, except when an application is  
authorized by the rules, shall be by written motion,

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

(a) the trustee or debtor in possession and on those entities specified by these rules; or

(b) *the entities the court directs if these rules do not require service or specify the entities to be served.*

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

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

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

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

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

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

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

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

In this case creditor AIS Portfolio Services, LLC filed a request for special notice. See Request for Notice, ECF No. 11. Thus, the objecting creditor is bound to serve the objection to confirmation on creditors who have filed requests for special notice.

The Certificate of Service filed in support of this motion by the objecting creditor does not list the above-named creditor as a party served with the notice as required. See *Certificate of Service*, ECF No. 32.



## **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.

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 overruled as moot.

23. [22-21984](#)-A-13      **IN RE: ANDREW KNIERIEM**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK  
9-28-2022    [\[22\]](#)

### **Final Ruling**

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

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

**Disposition:** Overruled as moot

**Order:** Civil minute order

### **THE CHAPTER 13 PLAN HAS BEEN SUPERSEDED**

Chapter 13 debtors may modify the plan before confirmation. 11 U.S.C. § 1323(a). If the debtor files a modification of the plan under § 1323, the modified plan becomes the plan and supersedes the prior plan. 11 U.S.C. § 1323(b). Filing a modified plan renders moot any prior plan. On October 14, 2022, the debtor filed an Amended Plan, ECF No. 35. Because an amended plan has superseded the plan to which the trustee objects, the court will overrule the objection as moot.

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

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

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

While its use is not yet mandatory David P. Cusick, the Chapter 13 Trustee, used Form EDC 7-005, in memorializing the service of documents in this motion and filed a Certificate of Service, ECF No. 25. That form was signed "Yvette Sanders" who apparently is a paraprofessional employed by the trustee. With one exception the Certificate of Service represents proper use of the new local rules and form Certificate of Service. Section 4 properly lists the documents served. Section 5 properly identifies the parties served with the objection. However, Section 6 is incorrectly completed. The objection to confirmation requires service under Fed. R. Civ. P. 5. Therefore, Box 6B is pertinent and the 6A designation is incorrect. The attachment reflecting the parties served should be labeled 6B2. These errors are not fatal in this case as the trustee properly served all required parties, including the parties requesting special notice in this case. The trustee and Ms. Sanders are to be commended on their precise and skillful application of the new local rules. The court appreciates the trustee's voluntary use of Form EDC 7-005.

#### **CIVIL MINUTE ORDER**

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

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

The 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 as moot.

24. [22-21984](#)-A-13     **IN RE: ANDREW KNIERIEM**  
[RMP-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY CREDITOR REAL TIME  
RESOLUTIONS, INC.  
9-29-2022    [\[26\]](#)

RENEE PARKER/ATTY. FOR MV.

### **Final Ruling**

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

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

**Disposition:** Overruled as moot

**Order:** Civil minute order

Real Time Resolutions, Inc. has objected to confirmation of the  
debtor's plan.

### **THE CHAPTER 13 PLAN HAS BEEN SUPERSEDED**

Chapter 13 debtors may modify the plan before confirmation. 11  
U.S.C. § 1323(a). If the debtor files a modification of the plan  
under § 1323, the modified plan becomes the plan and supersedes the  
prior plan. 11 U.S.C. § 1323(b). Filing a modified plan renders  
moot any prior plan. On October 14, 2022, the debtor filed an  
Amended Plan, ECF No. 35. Because an amended plan has superseded  
the plan to which the creditor objects, the court will overrule the  
objection as moot.

### **NOTICE**

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

### Objection to Confirmation

This objection is brought pursuant to Fed. R. Bankr. P. 9014 which  
requires that notice and an opportunity to be heard shall be  
"afforded the party against whom relief is sought." An objection to  
the confirmation of a Chapter 13 plan is governed by Fed. R. Bankr.  
P. 2002(b). Additionally, the court has directed that objections  
and motions must be served on parties which have file a request for  
special notice as follows.

### Rules 9013 and 9007

A request for an order, except when an application is  
authorized by the rules, shall be by written motion,  
unless made during a hearing. The motion shall state

with particularity the grounds therefor, and shall set forth the relief or order sought. Every written motion, other than one which may be considered ex parte, shall be served by the moving party within the time determined under Rule 9006(d). The moving party shall serve the motion on:

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

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

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

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

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

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

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

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

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

In this case creditors AIS Portfolio Services, LLC, and Deutsche Bank National Trust Company filed requests for special notice. See Request for Notice, ECF Nos. 11, 12. Thus, the objecting creditor is bound to serve the objection to confirmation on creditors who have filed requests for special notice.

The Certificate of Service filed in support of this motion by the objecting creditor does not list the above-named creditors as parties served with the notice as required. See *Certificate of Service*, ECF No. 29.

The court will continue the hearing on his objection to confirmation to allow for notice to the special notice parties.

#### **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 objection, attorney Renee Parker filed a Certificate of Service, ECF No. 29. With some exceptions the Certificate of Service represents generally the proper use of the new local rules and form Certificate of Service. First, Section 4 is incomplete and there is not an Attachment 4 which properly identifies the documents served. In this case the omission is not fatal as the documents are listed on page 1 of the certificate. Second, the certificate fails to indicate notice to special notice creditors as indicated above in the court's ruling. Third, counsel has used an outdated version of the certificate dated 6/22. The form has been updated and a current version is available on the court's website. Fourth, while the United States Trustee was properly served the completion of the certificate regarding service of the UST is improper. Service upon the UST is not required under Fed. R. Bankr. P. 7004 but rather Fed. R. Civ. P. 5. Thus, Box 6B2 should have been checked for service upon this party. Attachment 6(B)(3) properly identifies the parties which were served with the objection. The court appreciates counsel's voluntary use of the new form certificate.

#### **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.

Real Time Resolutions, Inc.'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 as moot.

25. [19-24389](#)-A-13     **IN RE: LISA KNAPP**  
[MRL-2](#)

MOTION TO MODIFY PLAN  
8-29-2022    [\[32\]](#)

MIKALAH LIVIAKIS/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).

### **INCREASED VOLUNTARY PENSION CONTRIBUTIONS**

The debtor proposes a plan which reduces the percentage to be paid to unsecured creditors to 0%. See Chapter 13 Plan, ECF No. 33. The previously confirmed plan called for a 2% distribution to unsecured creditors, ECF No. 2. The court notes that the proposed plan term is also being reduced from 60 months to 46 months.

Additionally, the debtor proposes to increase the amount of her monthly voluntary contribution to a 401(k) plan from \$0 to \$600.00. The trustee objects to the 401(k) contribution.

The court notes that the debtor has enjoyed a substantial increase in income since the filing of her bankruptcy petition. Her monthly employment income has increased from \$4,160.00 gross to \$6,000.00 gross, yet the plan calls for a reduction in plan term and decrease in disbursement to the unsecured creditors while the debtor enjoys a \$600.00 monthly windfall by means of a contribution to her voluntary 401(k) plan.

### Good Faith

To determine bad faith a bankruptcy judge must review the "totality of the circumstances." *In re Goeb*, 675 F.2d 1386, 1391 (9th Cir.1982). "A bankruptcy court must inquire whether the debtor has misrepresented

facts in his plan, unfairly manipulated the Bankruptcy Code, or otherwise proposed his Chapter 13 plan in an inequitable manner." *Id.*, at 1390.

While the trustee cites 11 U.S.C. 1325(b) as a basis for this objection this is incorrect. This section is not applicable to motions to modify under 11 U.S.C. § 1329(d)(3).

However, Section 1329(d)(3) does indicate that the requirements of 11 U.S.C. § 1325(a) must be satisfied. Thus, the proper context for this argument is that the modified plan is not proposed in good faith.

The debtor has filed a declaration in support of her plan. The declaration is silent regarding the new \$600.00 monthly voluntary 401(k) contribution, the reduction in plan length, or the reduced contribution to unsecured creditors. There is no explanation justifying the new expense, or any indication when the debtor began making the voluntary contribution to her 401(k).

Moreover, the declaration is silent regarding when the debtor received the increase in her monthly income. This case was filed on July 12, 2019, over 3 years ago. It is unclear to the court if the trustee has been provided tax returns or pay advices detailing the timing of the debtor's increased income.

The court considers explanations regarding changes to the debtor's income and expenses to be a part of the prima facie case in a motion to modify the plan. The trustee has properly opposed the motion and the debtor has failed to file a reply in rebuttal. The time to file a reply expired on October 11, 2022, under LBR 9014-1(f)(1)(C). The evidentiary record is closed.

The court finds that the debtor has failed to provide sufficient evidence establishing that her modified plan is proposed in good faith under 11 U.S.C. § 1325(a)(3). 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.

26. [22-21996](#)-A-13     **IN RE: GUADALUPE JOHNSON**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK  
9-28-2022    [\[19\]](#)

DAVID FOYIL/ATTY. FOR DBT.

### **Final Ruling**

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

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

**Disposition:** Continued to November 22, 2022, at 9:00 a.m.

**Order:** Civil minute order

The Chapter 13 trustee objects to confirmation of the debtor's plan. Because of the service issues discussed below the court will continue the hearing on this motion.

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

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

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

While its use is not yet mandatory David P. Cusick, the Chapter 13 Trustee, used Form EDC 7-005, in memorializing the service of documents in this motion and filed a Certificate of Service, ECF No. 22. That form was signed "Yvette Sanders" who apparently is a paraprofessional employed by the trustee. The Certificate of Service represents generally, the proper use of the form Certificate of Service.

Section 4 properly lists the documents served. Section 5 properly identifies the parties served with the objection and is supported by Attachment 6A1 which lists all parties served, including the parties requesting special notice in this case. However, Section 6 of the certificate is not completed, the form is blank. Thus, the affidavit does not state how the parties in the attachment were served. Because the affidavit is incomplete the court will continue the hearing on the trustee's objection to confirmation to allow for proper service.

### **CIVIL MINUTE ORDER**

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



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

The 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 hearing on the trustee's objection to confirmation is continued to November 22, 2022, at 9:00 a.m. Not later than October 25, 2022, the Chapter 13 trustee shall file and serve the objection and a notice of continued hearing on the debtor and all parties which have filed a special notice in this case.

IT IS FURTHER ORDERED that not later than November 8, 2022, the debtor shall file and serve written opposition, if any, to the trustee's objection. Should the debtor fail to file an opposition the court will rule on the trustee's objection without further notice or hearing.

27. [22-21999](#)-A-13     **IN RE: JESSICA LOPEZ**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK  
9-28-2022    [\[22\]](#)

MATTHEW DECAMINADA/ATTY. FOR DBT.

### **Tentative Ruling**

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

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

**Disposition:** Sustained and confirmation denied

**Order:** Civil minute order

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

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

## **PLAN FEASIBILITY**

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

### Schedule I Deductions

The trustee contends that he is unable to assess the plan's feasibility as the debtor has failed to account for any payroll tax deductions from her employment check. See Schedule I, ECF No. 11. The court also notes that Schedule I does not provide any income for the debtor's non-filing spouse, nor does Schedule J provide the ages of the dependents residing in the debtor's household. It is impossible for the court, the trustee, or any interested creditor to determine the appropriateness of the debtor's expenses without complete schedules. The debtor admitted at the 341 meeting that deductions are taken from her paycheck. The court finds that the plan is not feasible as these deductions are not reflected in Schedule I.

## **GOOD FAITH**

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

### Failure to File Accurate and Complete Schedules

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

The trustee contends that the documents are inaccurate as the debtor has failed to account for her non-filing spouse's income on Schedule I, the debtor failed to account for payroll deductions taken from her pay on Schedule I; the debtor failed to amend the petition to include her complete name; and the debtor failed to file a spousal waiver but asserts exemptions in assets under C.C.P. § 703.140(b).

The court notes that the following documents have not yet been amended: 1) Petition, disclosing the debtor's complete and correct name; 2) Schedule I, to reflect the debtor's payroll deductions and non-filing spouse's income; 3) Form 122C-1 to reflect income from the debtor's non-filing spouse.

On October 7, 2022, the debtor filed a spousal waiver, ECF No. 28 which resolves only this portion of the trustee's objection.

The court finds that the plan is not feasible under 11 U.S.C. § 1325(a)(6) and that the plan is not proposed in good faith under 11 U.S.C. § 1325(a)(3).

#### **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.