

**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: NOVEMBER 1, 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. [22-22103](#)-A-13     **IN RE: DIANE/ANDREW GARCIA**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK  
10-12-2022    [\[17\]](#)

HARRY ROTH/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 December 6, 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 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 Wilmington Savings Fund Society, has filed a request for special notice. *See Request for Notice*, ECF No. 11. 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. 20.

The court will continue the hearing on this 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 December 6, 2022, at 9:00 a.m. Not later than November 8, 2022, the Chapter 13 trustee shall file and serve the objection and an amended notice of hearing on the debtor and all parties which have filed a request for special notice in this case.

IT IS FURTHER ORDERED that not later than November 22, 2022, the debtor shall file and serve written opposition, if any, to the trustee's objection. Should the debtor fail to file a written opposition the court will rule on the trustee's objection without further notice or hearing.

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

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

PETER MACALUSO/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Denied

**Order:** Civil minute order

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

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

The issues in this matter having been sufficiently briefed by the debtor, the Chapter 13 trustee, and the opposing creditor U.S. Bank, N.A., the court finds that the matter does not require oral argument. LBR 9014-1(h); *Morrow v. Topping*, 437 F.2d 1155, 1156 (9th Cir. 1971) (approving local rules that authorize disposition

without oral argument). Further, no evidentiary hearing is necessary for resolution of material, factual issues.

## **BACKGROUND**

The debtor's motion to confirm was continued to allow for further evidence by the debtor. The issue before the court is whether the debtor has sufficiently proven the feasibility of her proposed plan under 11 U.S.C. § 1325(a)(6). The feasibility of the plan hinges upon the monthly contribution of the debtor's son, Keenan Shinn, in the amount of \$885.00. At the prior hearing the court ordered as follows:

IT IS FURTHER ORDERED that not later than October 4, 2022, the Debtor shall file Schedules I and J for the Debtor's son, under penalty of perjury, including a detailed declaration by the son indicating his willingness and ability to contribute.

Order, ECF No. 61.

Mr. Shinn filed a declaration in support of the debtor's position. Exhibits consisting of pay advices were also filed. See Declaration of Keenan Shinn, ECF No. 63 and Exhibits, ECF No. 64. A budget using forms I and J was not filed as ordered.

## **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).

## Multiple Chapter 13 Filings

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

Case Number	Date Filed	Confirmed	Son's Monthly Contribution	Dismissed
2014-28235	August 13, 2014	No	None. Case dismissed without filed plan.	August 27, 2014
2014-32109	December 15, 2014	No	\$400.00	February 18, 2015
2016-20016	January 5, 2016	Yes, Order Extending Stay	\$500.00	December 8, 2017
2018-23464	June 1, 2018	Yes, Order Extending Stay	\$1,000.00 at inception of case; \$830.00 proposed March 2022.	March 10, 2022

Like the present case, 3 of the debtor's 4 prior cases relied upon significant contributions from the debtor's son. Moreover, the contribution amount increased with each subsequent case, yet never enabled the debtor to complete a plan. The proposed contribution amount in the instant case is \$885.00 which is also an increase from the amount proposed as recently as March 2022, in the previous case.

#### Evidence Fails to Support Plan Feasibility

The trustee and objecting creditor contend that the evidence provided by the debtor is not sufficient to prove plan feasibility. The court agrees.

The court ordered that the debtor's son provide proof of his income and expenses in detailed form, in the form of Schedules I and J. Evidence in this form was not submitted. As such, the evidence which was submitted lacks sufficient detail for the court to determine Mr. Shinn's ability to contribute \$885.00 each month to the debtor's plan.

Mr. Shinn's declaration provides in relevant part as follows:

1. I understand that my mother is in a Chapter 13 bankruptcy case for the next 60 months.
2. I am employed by: IHSS: \$1,567.34 Respite Care: \$ 855.76 Door Dash: \$ 300.00
3. My Total Income is approximately: \$2,723.09
4. My Expenses (sic) not included (sic): Rent: \$ 0.00 Utilities: \$ 0.00
5. My Expenses do include: Cellphone: \$ 75.00 Food: \$400.00 Personal Care: \$ 50.00 Clothing: \$ 50.00 Transportation: \$300.00 Entertainment: \$100.00 Car Insurance: \$120.00
6. My Total Expenses is (sic): \$1,095.00
7. My Disposable Income is: \$1,628.10
8. My Contribution to Plan is: \$ 885.00

9. Additional Income Projected on Hand is: \$ +743.10
10. I live at my mother's home and occupy half the house.
11. I will contribute to my mother of (sic) \$885.00 per month.
12. I can afford to make this payment

Declaration of Keenan Shinn, ECF No. 63, 1:20-27, 2:1-8.

The official form Schedule J provides the numerous expense categories generally required to sustain a household. The expenses proffered by Mr. Shinn omit many categories which would be essential over the life of a 60-month plan. For example, Mr. Shinn has provided no expenses for medical or dental care. The court also observes that none of the pay advices in the exhibits show any deductions for medical or dental insurance. Moreover, the monthly expenses indicated for personal care (\$50.00), and clothing (\$50.00), appear lean and impractical over a period of 60 months. Additionally, it is unclear whether \$300.00 for transportation includes all the expenses normally associated with the operation of a vehicle including fuel, maintenance, repairs, and registration. Given that Mr. Shinn earns money working for Door Dash, although no proof of this income has been tendered, the court finds the sum of \$300.00 per month for transportation to be impractical absent additional detail.

The proffered income information also suffers from lack of relevant detail. First, as the objecting creditor correctly observes, the pay advices submitted in support of the plan are outdated and do not show Mr. Shinn's present income. The most recent pay advice is dated July 27, 2022, and many of the additional advices are dated February, March, and June 2022.

Second, Mr. Shinn states in the declaration that his income is approximately \$2,723.09 each month. It is unclear how this sum was calculated. It is also unclear if this sum is a gross amount or a net amount, given the failure to provide evidence of income from Door Dash. Without recent pay advices to support the declaration it is unclear if the information submitted is accurate.

The court finds that the plan is not feasible under 11 U.S.C. § 1325(a)(6). The evidence proffered by the debtor and her son lacks sufficient detail to be credible. 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 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.

3. [22-21008](#)-A-13     **IN RE: CYNTHIA PAYSINGER**  
[PGM-2](#)

OPPOSITION TO MOTION TO CONFIRM PLAN BY U.S. BANK,  
N.A.  
8-30-2022    [\[52\]](#)

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

**Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Denied

**Order:** Civil minute order

This "objection to confirmation of plan" by U.S. Bank, N.A. is incorrectly titled. It is properly filed with docket control number PGM-2 which corresponds to the Debtor's Motion to Confirm Chapter 13 Plan. The court construes this "objection" as opposition to the debtor's motion to confirm plan.

The court encourages counsel to review LBR 3015-1(d). Incorrect designations of pleadings on the docket create significant difficulties for the clerk's office and the court. In the future failure to properly title documents may result in denial of relief and/or sanctions. LBR 1001-1(g).

The Chapter 13 trustee has also opposed the motion and contends the plan is not feasible under 11 U.S.C. § 1325(a)(6).

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).

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

The issues in this matter having been sufficiently briefed by the debtor, the Chapter 13 trustee, and the opposing creditor U.S. Bank, N.A., the court finds that the matter does not require oral argument. LBR 9014-1(h); *Morrow v. Topping*, 437 F.2d 1155, 1156 (9th Cir. 1971) (approving local rules that authorize disposition without oral argument). Further, no evidentiary hearing is necessary for resolution of material, factual issues.

#### **BACKGROUND**

The debtor's motion to confirm was continued to allow for further evidence by the debtor. The issue before the court is whether the debtor has sufficiently proven the feasibility of her proposed plan under 11 U.S.C. § 1325(a)(6). The feasibility of the plan hinges upon the monthly contribution of the debtor's son, Keenan Shinn, in the amount of \$885.00. At the prior hearing the court ordered as follows:

IT IS FURTHER ORDERED that not later than October 4, 2022, the Debtor shall file Schedules I and J for the Debtor's son, under penalty of perjury, including a detailed declaration by the son indicating his willingness and ability to contribute.

Order, ECF No. 61.

Mr. Shinn filed a declaration in support of the debtor's position. Exhibits consisting of pay advices were also filed. See Declaration of Keenan Shinn, ECF No. 63 and Exhibits, ECF No. 64. A budget using forms I and J was not filed as ordered.

#### **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).

### Multiple Chapter 13 Filings

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

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2018-23464	June 1, 2018	Yes, Order Extending Stay	\$1,000.00 at inception of case; \$830.00 proposed March 2022.	March 10, 2022

Like the present case 3 of the debtor's 4 prior cases relied upon significant contributions from the debtor's son. Moreover, the contribution amount increased with each subsequent case, yet never enabled the debtor to complete a plan. The proposed contribution amount in the instant case is \$885.00 which is also an increase from the amount proposed as recently as March 2022, in the previous case.

### Evidence Fails to Support Plan Feasibility

The objecting creditor and the trustee contend that the evidence provided by the debtor is not sufficient to prove plan feasibility. The court agrees.

The court ordered that the debtor's son provide proof of his income and expenses in detailed form, in the form of Schedules I and J. Evidence in this form was not submitted. As such, the evidence which was submitted lacks sufficient detail for the court to determine Mr. Shinn's ability to contribute \$885.00 each month to the debtor's plan.

The declaration provides in relevant part as follows:

1. I understand that my mother is in a Chapter 13 bankruptcy case for the next 60 months.
2. I am employed by: IHSS: \$1,567.34 Respite Care: \$ 855.76 Door Dash: \$ 300.00
3. My Total Income is approximately: \$2,723.09
4. My Expenses (sic) not included (sic): Rent: \$ 0.00 Utilities: \$ 0.00

5. My Expenses do include: Cellphone: \$ 75.00 Food: \$400.00 Personal Care: \$ 50.00 Clothing: \$ 50.00 Transportation: \$300.00 Entertainment: \$100.00 Car Insurance: \$120.00
6. My Total Expenses is (sic): \$1,095.00
7. My Disposable Income is: \$1,628.10
8. My Contribution to Plan is: \$ 885.00
9. Additional Income Projected on Hand is: \$ +743.10
10. I live at my mother's home and occupy half the house.
11. I will contribute to my mother of (sic) \$885.00 per month.
12. I can afford to make this payment

Declaration of Keenan Shinn, ECF No. 63, 1:20-27, 2:1-8.

Schedule J provides the numerous expense categories required generally to sustain a household. The expenses proffered by Mr. Shinn omit many categories which would be essential over the life of a 60-month plan. For example, Mr. Shinn has provided no expenses for medical or dental care. The court also observes that none of the pay advices in the exhibits show any deductions for medical or dental insurance. Moreover, the monthly expenses indicated for personal care (\$50.00), and clothing (\$50.00), appear lean and impractical over a period of 60 months. Additionally, it is unclear whether \$300.00 for transportation includes all the expenses normally associated with the operation of a vehicle including fuel, maintenance, repairs, and registration. Given that Mr. Shinn earns money working for Door Dash, although no proof of this income has been tendered, the court finds the sum of \$300.00 per month for transportation to be impractical absent additional detail.

The proffered income information also suffers from lack of relevant detail. First, as the objecting creditor correctly observes, the pay advices submitted in support of the plan are outdated and do not show Mr. Shinn's present income. The most recent pay advice is dated July 27, 2022, and many of the additional advices are dated February, March, and June 2022.

Second, Mr. Shinn states in the declaration that his income is approximately \$2,723.09 each month. It is unclear how this sum was calculated. It is also unclear if this sum is a gross amount or a net amount, given the failure to provide income information from Door Dash. Without recent pay advices to support the declaration it is unclear if the information submitted is accurate.

The court finds that the plan is not feasible under 11 U.S.C. § 1325(a)(6). The evidence proffered by the debtor and her son lack sufficient detail to be credible. 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.

U.S. Bank, N.A.'s opposition to the motion to confirm Chapter 13 plan has been presented to the court. Having considered the objection together with papers filed in support and opposition to it, and having heard the arguments of counsel, if any, and good cause appearing, presented at the hearing,

IT IS ORDERED that the debtor's motion to confirm Chapter 13 plan is denied. The court denies confirmation of the chapter 13 plan.

4. [22-22508](#)-A-13     **IN RE: DANIEL/PHILANA SANCHEZ**  
[MS-1](#)

MOTION TO VALUE COLLATERAL OF ONEMAIN FINANCIAL GROUP, LLC  
10-4-2022    [\[11\]](#)

MARK SHMORGON/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### Final Ruling

**Motion:** Value Collateral Motor Vehicle

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

**Disposition:** Granted

**Order:** Civil minute order

**Property:** 2015 Hyundai Elantra Limited Sedan

**Value:** \$8,312.00

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

The debtors seek an order valuing the collateral of OneMain Financial Group, LLC, a 2015 Hyundai Elantra Limited Sedan.

### VALUATION OF COLLATERAL

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

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

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

In this case, the debtor seeks to value collateral consisting of a motor vehicle described as a 2015 Hyundai Elantra Limited Sedan. The debt owed to the respondent is not secured by a purchase money security interest. See 11 U.S.C. § 1325(a) (hanging paragraph). The court values the vehicle at \$8,312.00.

#### **CIVIL MINUTE ORDER**

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

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

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

IT IS ORDERED that the motion is granted. The personal property collateral described as a 2015 Hyundai Elantra Limited Sedan has a value of \$8,312.00. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$8,312.00 equal to the value of the collateral that is unencumbered by senior liens. The respondent has a general unsecured claim for the balance of the claim.

5. [22-22110](#)-A-13     **IN RE: MANUEL SAUCEDO GONZALEZ AND REGINA SAUCEDO**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK  
10-12-2022    [\[28\]](#)

### **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).

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

### **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 debtors did not attend the scheduled meeting October 6, 2022. Thus, the trustee was unable to examine the debtors regarding the issues raised in this motion. The court will sustain the objection

### **PLAN FEASIBILITY**

The proposed plan must be feasible. 11 U.S.C. § 1325(a)(6). Feasibility is a "factual determination" as to the plan's "reasonable likelihood of success." *First Nat'l Bank of Boston v. Fantasia (In re Fantasia)*, 211 B.R. 420, 423 (B.A.P. 1st Cir. 1997). The bankruptcy court needs to "be satisfied that the debtor has the present as well as the future financial capacity to comply with the

terms of the plan." *Id.* As one court summarized feasibility, "Thus, a plan is not feasible and is not confirmable if a debtor's income will not support the plan's proposed payments. *In re Barnes*, 275 B.R. 889, 894 (Bankr. E.D. Cal.2002) ("[T]he debtors showed no disposable income with which to fund a plan.... [T]he debtors have been unable to actually pay the amount projected ... to the trustee."); *In re Bernardes*, 267 B.R. 690, 695 (Bankr. D.N.J. 2001) ("While the feasibility requirement is not rigorous ... the plan proponent must, at minimum, demonstrate that the Debtor's income exceeds expenses by an amount sufficient to make the payments proposed by the plan."); *In re Wilkinson*, 99 B.R. 366, 369 (Bankr. N.D. Ohio 1989) ("[D]ebtors will not be able to comply with the plan and make all payments thereunder."). *In re Buccolo*, 397 B.R. 527, 530 (Bankr. D.N.J. 2008), *aff'd*, 2009 WL 2132435 (D.N.J. July 13, 2009).

#### Failure to Provide Income Information

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

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

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

#### Failure To Provide Financial/Business Documents

The debtors have failed to provide the trustee with required or requested documents. See 11 U.S.C. § 521(a)(3)-(4).

The trustee requested that the debtor provide him with documents which are required under § 521 of the Bankruptcy Code and with additional documents which the trustee required to properly prepare for the 341 meeting of creditors. The debtors failed to produce the following documents: pay advices.

The failure to provide income information makes it impossible for the chapter 13 trustee to accurately assess the debtors' 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 will sustain the trustee's objection.

## **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 the plan has not been proposed in good faith as the following inaccuracies or inconsistencies appear in the petition, plan, and schedules filed with the court: (1) failure to list all prior bankruptcy cases in the petition; (2) failure to provide the percentage to be paid to unsecured creditors in Section 3.14 of the proposed plan, the court notes that this alone is fatal to confirmation of the proposed plan; (3) inconsistencies between the proposed plan and the debtors' schedules regarding the amounts owed to Class 1 creditor(s) and the value of the real property; (4) inappropriate expenses contained in Schedule J while the plan proposes to pay those expenses.

The court finds that the plan is not proposed in good faith under 11 U.S.C. § 1325(a)(3). Given the nature of the trustee's objections the court also finds the plan again is not feasible under 11 U.S.C. § 1325(a)(6).

The court will sustain the trustee's objection.

## **SERVICE AND NOTICE**

As of November 1, 2022, the 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.

### Service of Objection to Confirmation in Chapter 13

An objection to confirmation of a plan shall be filed and served on the debtor, the trustee, and any other entity designated by the court, and shall be transmitted to the United States trustee, at least seven days before the date set for the hearing on confirmation, unless the court orders otherwise. An

*objection to confirmation is governed by Rule 9014. If no objection is timely filed, the court may determine that the plan has been proposed in good faith and not by any means forbidden by law without receiving evidence on such issues.*

Fed. R. Bankr. P. 3015(f) (emphasis added).

Rule 3015(f) provides that Fed. R. Bankr. P. 9014 governs in objections to confirmation of a Chapter 13 plan. As such, Rule 9014(b) prescribes that service is required under Rule 7004 as follows.

*The motion shall be served in the manner provided for service of a summons and complaint by Rule 7004 and within the time determined under Rule 9006(d). Any written response to the motion shall be served within the time determined under Rule 9006(d). Any paper served after the motion shall be served in the manner provided by Rule 5(b) F. R. Civ. P.*

Fed. R. Bankr. P. 9014(b) (emphasis added).

Rule 7004, allows service on the debtor "after a petition has been filed by or served upon the debtor and until the case is dismissed or closed, by mailing a copy of the summons and complaint to the debtor at the address shown in the petition or to such other address as the debtor may designate in a filed writing." Fed. R. Bankr. P. 7004(b) (9).

The Chapter 13 trustee filed a certificate of service in this case using EDC 7-005, ECF No. 31. The trustee has correctly served both the debtor and the creditor which requested special notice by first class mail. However, Form EDC 7-005 is incorrectly completed.

Service under Fed. R. Bankr. P. 7004, 9014(b), 3015(f) is correctly indicated in the certificate of service as to the debtor.

#### Special Notice Parties

Conversely, service of the objection to confirmation on the special notice parties is made under Fed. R. Civ. P. 5, as incorporated by Fed. R. Bankr. P. 7005. Service is not made under Rule 7004, nor has it been accomplished under Rule 7004 in this case. Rule 5 allows for service on parties by first class mail. Thus, the trustee has properly served the objection on the special notice parties.

While the trustee has properly served the special notice creditors, he has not properly memorialized the service in the Certificate of Service. Box 6B should have been checked on page 3 indicating Rule 5 service where Rule 7004 was not applicable. In this case box 6B is left blank.

Finally, while the certificate properly includes Attachment 6A1 describing Rule 7004 service on the debtor, it improperly includes

or identifies the special notice creditor on the same list. The special notice creditors must be indicated in a separate attachment. To properly memorialize service Attachment 6B2 must be included listing the special notice parties, while indicating the appropriate parties in interest in the certificate. Alternatively, the trustee could use the Clerk's Matrix of special notice creditors and attach that list as Attachment 6B3, again checking the corresponding boxes in the 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 objection is sustained. The court denies confirmation of the chapter 13 plan.

6. [22-22112](#)-A-13     **IN RE: DONALD/BETTINA DENNE**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK  
10-12-2022    [\[28\]](#)

PETER MACALUSO/ATTY. FOR DBT.

#### **Tentative Ruling**

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

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

**Disposition:** Sustained and confirmation denied

**Order:** Civil minute order

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

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

## **CONTINUED MEETING OF CREDITORS**

The court notes that the meeting of creditors has been continued until November 3, 2022. The court will not continue this objection as the court considers the filing of the Business Income and Expense Attachments to Schedules I and J and the proper listing of all assets to be part of the debtors' prima facie case for confirmation. This is information which is critical for the court, the trustee and creditors to have when the case is filed, and not in response to an objection to confirmation.

## **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 \$2,000.00 with another payment of \$5,000.00 due October 25, 2022, which is prior to the date of the hearing on this objection. The plan cannot be confirmed if the plan payments are not current.

### Failure To Provide Financial/Business Documents

The debtors have failed to provide the trustee with required or requested documents. See 11 U.S.C. § 521(a)(3)-(4).

The trustee requested that the debtors provide him with documents which are required under § 521 of the Bankruptcy Code and with additional documents which the trustee required to properly prepare for the 341 meeting of creditors. The debtors failed to produce the following documents: (1) the trustee's completed Business Questionnaire for both businesses operated by the debtors; (2) 6 months separate profit and loss statements for each of the debtors'

businesses; (3) 2020 tax return; (4) Bank of America account statements.

The failure to provide income information makes it impossible for the chapter 13 trustee to accurately assess the debtors' 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 will sustain the trustee's objection.

#### Incomplete and/or Inaccurate Bankruptcy Information

The trustee contends that the following inaccurate and/or incomplete information in the bankruptcy schedules, plan and statements impede his ability to assess the feasibility of the proposed plan under 11 U.S.C. § 1325(a) (6): (1) failure to provide Attachment to Schedules I and J for either of the debtors' businesses; (2) false reporting of monthly Social Security income in the amount of \$1,100.00; (3) failure to provide any evidence indicating the ability of the debtors to increase the plan payment as proposed in the amount of \$6,250.00 per month in the third year of the plan; (4) failure to list business income as required in the Statement of Financial Affairs.

The court will sustain each of the trustee's feasibility objections.

#### **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 or incomplete schedules and statements and failing to promptly amend documents does not evidence that the plan is proposed in good faith. The debtors have failed to list the following assets in their bankruptcy schedules: (1) Venmo account; (2) car wash equipment valued at approximately \$125,000.00; (3) amounts due to the debtor (who is a realtor) from open escrows when the case was filed; (4) bank accounts at Bank of America and First Northern.

The court considers these omissions fatal to confirmation of the instant plan. In addition to preventing the trustee from analyzing the feasibility of the proposed plan as argued by the trustee, the failure to list and properly value all assets make it impossible for the court or the trustee to determine if the plan meets the liquidation test of 11 U.S.C. § 1325(a) (4). The court considers this information part of the debtors' prima facie case for

confirmation which should be listed prior to the meeting of creditors so that the trustee can perform his required duties. The failure to list all assets or to promptly amend the bankruptcy schedules is proof that the plan is not proposed in good faith under 11 U.S.C. § 1325(a)(3). The court notes that the 341 meeting was conducted on October 6, 2022, and that the schedules have not yet been amended to list and value the debtors' assets as required.

The court finds the debtors' have not proposed the plan in good faith under 11 U.S.C. § 1325(a)(3).

### **SERVICE AND NOTICE**

As of November 1, 2022, the 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.

#### Service of Objection to Confirmation in Chapter 13

An objection to confirmation of a plan shall be filed and served on the debtor, the trustee, and any other entity designated by the court, and shall be transmitted to the United States trustee, at least seven days before the date set for the hearing on confirmation, unless the court orders otherwise. *An objection to confirmation is governed by Rule 9014.* If no objection is timely filed, the court may determine that the plan has been proposed in good faith and not by any means forbidden by law without receiving evidence on such issues.

Fed. R. Bankr. P. 3015(f) (emphasis added).

Rule 3015(f) provides that Fed. R. Bankr. P. 9014 governs in objections to confirmation of a Chapter 13 plan. As such, Rule 9014(b) prescribes that service is required under Rule 7004 as follows.

*The motion shall be served in the manner provided for service of a summons and complaint by Rule 7004 and within the time determined under Rule 9006(d). Any written response to the motion shall be served within the time determined under Rule 9006(d). Any paper served after the motion shall be served in the manner provided by Rule 5(b) F. R. Civ. P.*

Fed. R. Bankr. P. 9014(b) (emphasis added).

Rule 7004, allows service on the debtor "after a petition has been filed by or served upon the debtor and until the case is dismissed

or closed, by mailing a copy of the summons and complaint to the debtor at the address shown in the petition or to such other address as the debtor may designate in a filed writing." Fed. R. Bankr. P. 7004(b)(9).

The Chapter 13 trustee filed a certificate of service in this case using EDC 7-005, ECF No. 31. The trustee has correctly served both the debtor, debtor's counsel, and the creditor(s) which requested special notice by first class mail. However, Form EDC 7-005 is incorrectly completed.

Service under Fed. R. Bankr. P. 7004, 9014(b), 3015(f) is correctly indicated in the certificate of service as to the debtor and counsel.

#### Special Notice Parties

Conversely, service of the objection to confirmation on the special notice parties is made under Fed. R. Civ. P. 5, *as incorporated by* Fed. R. Bankr. P. 7005. Service is not made under Rule 7004, nor has it been accomplished under Rule 7004 in this case. Rule 5 allows for service on parties by first class mail. Thus, the trustee has properly served the objection on the special notice parties.

While the trustee has properly served the special notice creditors, he has not properly memorialized the service in the Certificate of Service. Box 6B and 6B2 should have been checked on page 3 indicating Rule 5 service where Rule 7004 was not applicable. In this case box 6B and 6B2 are left blank.

Finally, while the certificate properly includes Attachment 6A1 describing Rule 7004 service on the debtor, it improperly includes or identifies the special notice creditor(s) on the same list. The special notice creditors must be indicated in a separate attachment. To properly memorialize service Attachment 6B2 must be included listing the special notice parties, while indicating the appropriate parties in interest in the certificate. Alternatively, the trustee could use the Clerk's Matrix of special notice creditors and attach that list as Attachment 6B3, again checking the corresponding boxes in the 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 objection is sustained. The court denies confirmation of the chapter 13 plan.

7. [22-22112](#)-A-13     **IN RE: DONALD/BETTINA DENNE**  
[GB-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY FIRST NORTHERN BANK OF  
DIXON  
10-13-2022    [\[32\]](#)

PETER MACALUSO/ATTY. FOR DBT.  
VALERY LOUMBER/ATTY. FOR MV.

### **Tentative Ruling**

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

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

**Disposition:** Sustained and confirmation denied

**Order:** Civil minute order

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).

First Northern Bank of Dixon objects to confirmation of the debtors' plan.

### **CONTINUED MEETING OF CREDITORS**

The court notes that the meeting of creditors has been continued until November 3, 2022. The court will not continue the hearing on this objection as the court considers the filing of the Business Income and Expense Attachments to Schedules I and J as well as the complete listing of all assets to be part of the debtors' prima facie case for confirmation. This is information which is critical for the court, the trustee and creditors to have when the case is filed, and not in response to an objection to confirmation.

### **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).

First Northern Bank of Dixon objects to confirmation of the debtors' plan on the same bases as the objection raised by the Chapter 13 trustee. The court has sustained the trustee's objection (DPC-1), and therefore need only address the remaining issue raised by the objecting creditor.

#### Plan Fails to Account for Creditor's Secured Claim

The objecting creditor contends that the failure of the plan to provide for its secured claim renders the plan not feasible under 11 U.S.C. § 1325(a)(6). In this circumstance the court agrees.

The obligation owed to First Northern Bank of Dixon is secured by car washing equipment. The car washing business has been a significant source of the debtors' income in the past. See Statement of Financial Affairs, Item 5, ECF No. 14. It also appears that it is a current source of income. See Schedule I, *id.* How, or if, the debtors will make payments on the bank's loan directly impacts whether the business will generate any income during the pendency of the plan. Thus, the treatment of the secured obligation through the plan has a direct impact on the feasibility of the plan. The court finds that the failure to provide any treatment of this obligation renders the plan 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.

First Norther Bank of Dixon'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.

8. [19-24016](#)-A-13     **IN RE: SHARON PETERSEN**  
[DPC-2](#)

MOTION TO DISMISS CASE  
10-4-2022    [\[87\]](#)

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

### **Tentative Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

**Opposition Due:** October 18, 2022

**Opposition Filed:** Unopposed

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

**Best Interests of Creditors/Estate:** Reconvert to Chapter 7

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

### **CASE CONVERSION**

The chapter 13 trustee moves to covert this chapter 13 case for delinquency in payments under the confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to convert the case. Payments under the confirmed plan are delinquent in the amount of \$3,503.00 with a further payment of \$478.00 due October 25, 2022.

### **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).

This case was previously converted from a Chapter 7. The Chapter 7 trustee designated this case as an asset case and called for creditors to file claims. See ECF Nos. 13, 14. When the debtor moved to convert this case the Chapter 7 trustee filed the following response:

Kimberly Husted, the duly appointed trustee in the above matter, does not oppose the Debtor's motion to convert to Chapter 13 to the extent the only relief afforded is conversion to Chapter 13 and (i) the motion is not construed as a motion to approve a plan, (ii) that upon confirmation of a Chapter 13 plan, if the debtor fails to make her plan payments as required, this case will not be dismissed; rather, it shall be reconverted to a Chapter 7 case to allow the Trustee to administer property of the estate for the benefit of the unsecured creditors.

Response to Motion to Convert, ECF No. 16.

The case was converted to Chapter 13 on August 15, 2021. In its order the court ruled:

If the chapter 13 trustee moves to dismiss for any reason, the case will be re-converted and not dismissed;

...

Order Converting Case, ECF No. 21.

The court has been advised that the debtor is deceased. See Notice of Death, ECF No. 73. This is the second motion to dismiss or convert filed by the Chapter 13 trustee since the death of the debtor. The first motion was continued to allow debtor's counsel to notify non filing co-debtors and representatives of the debtor's estate of available options to continue the administration of the plan. No motion for approval of an administrator has been filed with the court and no opposition to the motion to dismiss/convert by the trustee has been filed.

Accordingly, the court finds that conversion is in the best interests of the creditors and the estate. The case will be re-converted to Chapter 7.

#### **SERVICE AND NOTICE**

As of November 1, 2022, the 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.

The Chapter 13 trustee filed a certificate of service in this case using EDC 7-005, ECF No. 90. The trustee has correctly served the debtor, the creditors which requested special notice, and other interested parties by first class mail.

#### Service of Motion to Dismiss or Convert Under 11 U.S.C. § 1307(c)

A motion to dismiss or convert a Chapter 13 case under 11 U.S.C. § 1307(c) is governed by Rule 1017 which provides "Rule 9014 governs a proceeding to dismiss or suspend a case, or to convert a case to another chapter, except under §§ 706(a), 1112(a), 1208(a) or (b), or 1307(a) or (b)." Fed. R. Bankr. P. 1017(f)(1). Rule 9014 prescribes the proper manner of service as follows:

*The motion shall be served in the manner provided for service of a summons and complaint by Rule 7004 and within the time determined under Rule 9006(d). Any written response to the motion shall be served within the time determined under Rule 9006(d). Any paper served after the motion shall be served in the manner provided by Rule 5(b) F. R. Civ. P.*

Fed. R. Bankr. P. 9014(b) (emphasis added).

Rule 7004, allows service on the debtor "after a petition has been filed by or served upon the debtor and until the case is dismissed or closed, by mailing a copy of the summons and complaint to the debtor at the address shown in the petition or to such other address as the debtor may designate in a filed writing." Fed. R. Bankr. P. 7004(b) (9).

The Chapter 13 trustee filed a certificate of service in this case using EDC 7-005, ECF No. 90. The trustee has correctly served both the debtor, debtor's counsel, the United States Trustee, and the parties which requested special notice by first class mail. However, Form EDC 7-005 is incorrectly completed and improperly memorializes service of the motion.

Service under Fed. R. Bankr. P. 7004, 9014(b), 1017(f)(1) is correctly indicated in the certificate of service as to the debtor and debtor's counsel.

#### Special Notice Parties

Conversely, service of the objection to confirmation on the special notice parties is made under Fed. R. Civ. P. 5, *as incorporated by* Fed. R. Bankr. P. 7005. Service is not made under Rule 7004, nor has it been accomplished under Rule 7004 in this case. Rule 5 allows for service on parties by first class mail. Thus, the trustee has properly served the objection on the special notice parties and other interested parties.

While the trustee has properly served the special notice creditors, he has not properly memorialized the service in the Certificate of Service. Box 6B and 6B2 should have been checked on page 3 indicating Rule 5 service where Rule 7004 was not applicable. In this case box 6B and 6B2 are left blank.

Additionally, while the certificate properly includes Attachment 6A1 describing Rule 7004 service on the debtor, it improperly includes or identifies the special notice creditors and other interested parties on the same list. To properly memorialize service on the special notice creditor(s) Attachment 6B2 must be included listing the special notice parties. Alternatively, the trustee could use the Clerk's Matrix of special notice creditors and attach that list as Attachment 6B3.

#### **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 or convert this chapter 13 case has been presented to the court. Having entered the default of respondent debtor for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted because of the delinquency under the confirmed chapter 13 plan in this case. The court hereby re-converts this case to Chapter 7.

9. [22-20718](#)-A-13     **IN RE: TIMOTHY/EVANGELINA HERNANDEZ**  
[CRG-5](#)

OBJECTION TO CLAIM OF CAVALRY SPV I, LLC, CLAIM NUMBER 1  
9-7-2022    [\[69\]](#)

CARL GUSTAFSON/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 22, 2022, at 9:00 a.m.

**Order:** Civil minute order

The debtor objects to the claim of Cavalry SPV I, 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 or objection and afforded an 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 Trust National Association has filed three requests for special notice, each request on behalf of a different creditor. *See Request for Notice*, ECF Nos. 11, 19, 45. Thus, the debtor is bound to serve the objection to claim on each creditor who has filed a request for special notice.

The Certificate of Service filed in support of this objection does not list the creditors as parties served with the notice as required. *See Certificate of Service*, ECF No.72.

The court will continue the hearing on the objection to claim 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 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 22, 2022, at 9:00 a.m. Not later than November 8, 2022, the debtor shall file and serve the objection and an amended notice of hearing on the trustee, the responding party, and all parties which have filed a request for special notice in this case.

10. [22-20718](#)-A-13     **IN RE: TIMOTHY/EVANGELINA HERNANDEZ**  
[CRG-6](#)

OBJECTION TO CLAIM OF LVNV FUNDING, LLC, CLAIM NUMBER 3  
9-7-2022     [\[73\]](#)

CARL GUSTAFSON/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 22, 2022, at 9:00 a.m.

**Order:** Civil minute order

The debtor objects to the claim of LVNV Funding, LLC, Claim No. 3.

### **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 or objection and afforded an 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 Trust National Association has filed three requests for special notice, each request on behalf of a different creditor. *See Request for Notice*, ECF Nos. 11, 19, 45. Thus, the debtor is bound to serve the objection to claim on each creditor who has filed a request for special notice.

The Certificate of Service filed in support of this objection does not list the creditors as parties served with the notice as required. *See Certificate of Service*, ECF No.76.

The court will continue the hearing on the objection to claim 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 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 22, 2022, at 9:00 a.m. Not later than November 8, 2022, the debtor shall file and serve the objection and an amended notice of hearing on the trustee, the responding party, and all parties which have filed a request for special notice in this case.

11. [20-20722](#)-A-13     **IN RE: ANTHONY/KAYLA YAZZIE**  
[DPC-4](#)

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

PETER MACALUSO/ATTY. FOR DBT.

### **No Ruling**

12. [20-20722](#)-A-13     **IN RE: ANTHONY/KAYLA YAZZIE**  
[PGM-6](#)

MOTION TO MODIFY PLAN  
9-15-2022    [[144](#)]

PETER MACALUSO/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).

The debtors seek an order modifying their Chapter 13 plan.

#### **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 \$1,750.00 under the proposed modified plan. The plan cannot be confirmed if the plan payments are not current.

#### Plan Fails to Properly Provide for Post-Petition Mortgage Arrears

Both the previously confirmed plan and the proposed modified plan provide for treatment of Community Loan in Class 1. Because the debtors failed to timely make plan payments under the previously confirmed plan, the trustee was unable to pay the post-petition contract installments to Community Loan in the amount of \$3,994.42. While the modified plan attempts to cure the post-petition arrearage, the amount indicated in the plan is incorrect as the plan does not identify all the monthly payments which have been missed. The modified plan proposes only to add \$1,997.21 in post-petition mortgage arrears to Class 1, representing the missed mortgage payment for July 2022. However, the trustee's records reflect the amount totals \$3,994.42, for the months of July and August 2022. The trustee is therefore unable to fully comply with §3.07(b) of the plan.

The court finds that the plan as proposed is not feasible under 11 U.S.C. § 1325(a)(6). A further modified plan must be proposed giving proper notice to the Class 1 claimant of the correct amount of mortgage arrearages payable through the plan.

#### Schedules I and J

As required the debtors filed supplemental Schedules I and J in support of the motion to modify the plan. See Schedules I and J, ECF No. 150. After reviewing the schedules, the trustee contends that they do not support the feasibility of the plan as the information in the schedules conflicts with other evidence proffered by the debtors in support of plan modification.

Supplemental Schedule I indicates that debtor, Anthony Yazzie is, and has been, employed at T-Mobile for three years. Conversely, the declaration of the debtors in support of the motion states as follows:

That my husband, Anthony has obtained a new job which is with Dignity Health Corp. 17. The job is slated to start on August 22, 2022, and his first paycheck will not be for a full two (2) weeks.

Declaration, ECF No. 147, 4:6-9.

Given the inconsistency in the evidence regarding the debtor's employment it is unclear to the court whether the debtor's income is accurately reflected in Schedule I. The court finds the plan is not feasible under 11 U.S.C. § 1325(a)(6).

#### **DEBTOR REPLY AND AMENDED SCHEDULES**

On October 25, 2022, the debtors filed a reply and supplemental Schedules I and J. See Reply, ECF No. 158, supplemental Schedules I and J, ECF No. 160.

The reply contends: (1) plan payments are now current; (2) requests that the court allow correction of the mortgage arrears in the order confirming the plan; and (3) indicates the filing of the supplemental budget schedules.

#### Plan Payments

LBR 9014-1(d)(3)(D) requires that "[e]very motion or other request for relief shall be accompanied by evidence ...".

There is no evidence regarding the plan payment which accompanies the reply. The debtors submitted no declaration indicating when the payment was tendered to the trustee, the amount of the payment, or how the payment was tendered. Neither is there an authenticated exhibit evidencing payment. The court gives no weight to unsworn statements made by counsel.

### Mortgage Arrears

The court has previously indicated in this ruling that the amount of mortgage arrearages may not be corrected in the order confirming the plan. To give proper notice of the proposed plan provisions the correct provision regarding the Class 1 arrears must be contained in the plan which was served upon the impacted Class 1 creditor. Moreover, it is unclear to the court if the plan is feasible with the change to mortgage arrears.

### Supplemental Schedules

The court considers the filing of complete and accurate budget schedules to be part of a prima facie case for confirmation of a plan. These documents must be filed at the outset of a motion to confirm and not in response to the trustee's opposition to the plan.

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.

13. [22-22424](#)-A-13     **IN RE: SANDRA WADLEY**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
10-11-2022     [\[13\]](#)

DEBTOR DISMISSED: 10/17/22

### **Final Ruling**

This case was dismissed on October 17, 2022. This motion is removed from the calendar as moot. No appearances are required.

14. [21-21825](#)-A-13     **IN RE: ROSE THORNWELL**  
[FF-2](#)

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

GARY FRALEY/ATTY. FOR DBT.

### **Final Ruling**

**Application:** Allowance of Additional Compensation

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

**Disposition:** Continued to December 13, 2022, at 9:00 a.m.

**Order:** Civil minute order

**Number of Requests for Additional Compensation:** First

**Additional Compensation Requested:** \$1,995.00

**Reimbursement of Expenses Requested:** \$57.00

### **COMPENSATION AND EXPENSES**

In this chapter 13 case, Gary Fraley, attorney for the debtors, has applied for an allowance of additional compensation. The applicant requests that the court allow additional compensation in the amount of \$1,995.00 and reimbursement of expenses in the amount of \$57.00.

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

### **DEBTOR OPPOSITION**

The hearing on this motion was continued to allow the debtor to file a declaration in support of the proposed motion. The debtor has filed a letter, without the benefit of counsel. In her letter the debtor states her opposition to the motion. See Opposition, ECF No. 44.

The motion will be continued to allow the parties to present evidence and argument as follows: (1) Mr. Fraley to provide a copy of the fee agreement with the debtor explaining the terms of employment, and any additional evidence and/or argument in support of the application; (2) the debtor to file evidence and/or argument stating whether she requested Mr. Fraley seek approval of the sale of her property, specify which if any charges in the billing statement to which she objects, present any further evidence and/or argument in support of her position; and (3) the Chapter 13 trustee to state his position regarding the reasonableness of the fees requested, and to provide analysis pursuant to *Matter of Gould*, 2022 WL 4353593, at \*2 (9th Cir. Sept. 20, 2022). The impact of a potential order for compensation upon the *liquidation test* under the

currently confirmed plan is unclear to the court. The Chapter 13 trustee was previously ordered to file a statement of his position and has not done so. See Order, ECF No. 40.

#### **CIVIL MINUTE ORDER**

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

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

IT IS ORDERED that the hearing on the application for additional compensation is continued to December 13, 2022, at 9:00 a.m.

IT IS FURTHER ORDERED that no later than November 15, 2022, Mr. Fraley shall file and serve any additional evidence or argument in support of his application, and Mr. Fraley shall file a copy of his compensation agreement with the debtor as an exhibit;

IT IS FURTHER ORDERED that no later than November 29, 2022, the Chapter 13 trustee shall file and serve a statement of position regarding the reasonableness of the compensation requested, and a statement indicating the effect of the requested compensation on the currently confirmed plan;

IT IS FURTHER ORDERED that no later than November 29, 2022, the debtor shall file and serve any further evidence or argument in support of her position consistent with this court's ruling;

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

15. [22-22535](#)-A-13     **IN RE: MICHELLE BAIRD**  
[MRL-1](#)

MOTION TO VALUE COLLATERAL OF ONE MAIN FINANCIAL GROUP, LLC  
10-12-2022    [\[12\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.

### **Tentative Ruling**

**Motion:** Value Collateral Motor Vehicle

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

**Disposition:** Granted

**Order:** Civil minute order

**Property:** 2011 Acura RDX

**Value:** \$15,000.00

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

No responding party is required to file written opposition to the motion; opposition may be presented at the hearing. LBR 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.

The debtor seeks an order valuing the collateral of OneMain Financial Group, LLC, a 2011 Acura RDX.

### **VALUATION OF COLLATERAL**

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

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

vehicle was acquired for the debtor's personal use. 11 U.S.C. § 1325(a) (hanging paragraph).

In this case, the debtor seeks to value collateral consisting of a motor vehicle described as a 2011 Acura RDX. The debt owed to the respondent is not secured by a purchase money security interest. See 11 U.S.C. § 1325(a) (hanging paragraph). The court values the vehicle at \$15,000.00.

#### **CIVIL MINUTE ORDER**

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

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

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

IT IS ORDERED that the motion is granted. The personal property collateral described as a 2011 Acura RDX has a value of \$15,000.00. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$15,000.00 equal to the value of the collateral that is unencumbered by senior liens. The respondent has a general unsecured claim for the balance of the claim.

16. [22-22146](#)-A-13     **IN RE: JOSE ROMERO SOTO**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK  
10-12-2022    [\[15\]](#)

ARETE KOSTOPOULOS/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).

The Chapter 13 trustee objects to the debtor's plan as follows.

#### **MATHEMATICAL FEASIBILITY**

The trustee opposes confirmation of the plan contending the plan is not mathematically feasible. The trustee calculates that the plan will take 123 months to fund as proposed.

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

#### **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 Improperly Provides for Attorney Fees

The trustee contends the plan is not feasible as it does not properly provide for payment of the agreed upon attorney fees in the amount of \$4,000.00 to the debtor's counsel. No boxes are checked in the plan indicating how the fees will be approved or paid. See Chapter 13 Plan, Section 3.05, ECF No. 3.

#### Attorney Fee Amount Unclear

Debtor's counsel has filed documents regarding compensation which contain inconsistent terms. The trustee cannot determine if the

plan is feasible because it is unclear how much counsel is to be paid.

The Rights and Responsibilities Statement, which is signed by the debtor and counsel, indicates that the agreed upon fees total \$4,000.00 and that \$687.00 was paid to counsel prior to the filing of the case. See Rights and Responsibilities, ECF No. 5.

Conversely, the proposed Chapter 13 Plan states that \$687.00 was paid prepetition but that \$3,513.00 is still owed in compensation. Together these amounts total \$4,200.00 which exceeds the amount allowed pursuant to the Rights and Responsibilities Statement.

Finally, the Disclosure of Compensation, which is signed only by the attorney includes the following provisions.

For all chapter 13 cases: All post-confirmation attorney fees, if any, shall be paid as a Class One Administrative Expense. \*Consistent with the 2016-b statement and the debtor(s) fee agreement with Kostopoulos & Associates PLLC., IF AT THE TIME OF CONFIRMATION, DEBTOR(S) ATTORNEY FEES EXCEED \$3000.00, DEBTOR(S) ATTORNEY SHALL FILE A FEE APPLICATION. IF THE ORDER CONFIRMING PLAN PROVIDES FOR THE FILING OF ATTORNEY FEES BY APPLICATION, THEN FOR 30 DAYS FOLLOWING THE ENTRY OF THE ORDER CONFIRMING PLAN, THE TRUSTEE SHALL HOLD FROM DISTRIBUTION THE SUM OF \$3000.00 AS A FUND FOR THE PAYMENT OF THE ATTORNEY FEES AND COSTS THAT SHALL BE DETERMINED BY THE COURT PURSUANT TO 11 U.S.C SECTION 330 AND LBR 2016-1 (EDM). IF NO FEE APPLICATION HAS BEEN FILED WITHIN THIS 30 DAY PERIOD, THE RESERVED FUNDS WILL BE RELEASED FOR DISTRIBUTION TO CREDITORS. If a fee application is timely filed, the trustee shall continue to withhold the above-indicated sum until an order resolving the fee application has been entered with the Court. At that time, the Trustee shall distribute the withheld funds according to the terms of the plan and (sic) the order granting/denying fees.

Disclosure of Compensation, ECF No. 1.

The court notes that none of the language contained in the additional terms of the Disclosure of Compensation are indicated in the debtor's plan. Moreover, the terms provided in the Disclosure directly conflict with those in the Rights and Responsibilities Statement which is signed by the debtor and counsel. As such, it is unclear to the court if counsel intends to opt in to the flat fee payment scheme. If so, counsel is limited to \$4,000.00 in attorney fees in this case, absent further application and order by this court.

Each application for additional compensation in Chapter 13 cases is reviewed to determine: (1) if the debtor has agreed to payment of the additional compensation; (2) whether the compensation requested is reasonable under both 11 U.S.C. §

330 and LBR 2016-1(c)(3); (3) the impact of the compensation requested on the currently confirmed plan, *Matter of Gould*, 2022 WL 4353593, at \*2 (9th Cir. Sept. 20, 2022).

The court finds that the attorney fee provisions contained in the Disclosure Statement are in direct conflict with the terms of the debtor's plan and the Rights and Responsibilities Statement executed by the debtor and counsel. Moreover, there is no evidence that the terms in the Disclosure Statement have been agreed to by the debtor.

Attorney compensation in this case shall be limited to \$4,000.00 in this case under LBR 2016-1(c)(1). Any additional compensation during the pendency of this case must be approved after a hearing on an application for compensation pursuant to 11 U.S.C. § 330. The provisions regarding additional attorney fees in the Disclosure of Compensation, ECF No. 1, will not be allowed.

#### **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.

IT IS FURTHER ORDERED that attorney fees shall be limited to \$4,000.00 in this case under LBR 2016-1(c)(1). Any additional compensation during the pendency of this case must be approved after a hearing on an application for compensation pursuant to 11 U.S.C. § 330. The provisions regarding additional attorney fees in the Disclosure of Compensation, ECF No. 1, will not be allowed.

17. [18-23651](#)-A-13     **IN RE: THOMAS HURST**  
[PGM-3](#)

CONTINUED MOTION FOR COMPENSATION FOR PETER G. MACALUSO,  
DEBTOR'S ATTORNEY(S)  
9-2-2022    [\[82\]](#)

PETER MACALUSO/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### **Final Ruling**

**Application:** Allowance of Additional Compensation

**Notice:** Continued from October 4, 2022, non-opposition filed by trustee; support declaration filed by debtor

**Disposition:** Approved

**Order:** Civil minute order

**Number of Requests for Additional Compensation:** First

**Additional Compensation Requested:** \$1,260.00

### **DEFAULT OF RESPONDENT**

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

The hearing on this motion was continued from October 4, 2022, to allow the Chapter 13 trustee to provide analysis of the proposed compensation on the confirmed Chapter 13 plan. The trustee has filed a status report. The report indicates that the current plan, which calls for a 100% distribution to unsecured creditors, is not impacted by the allowance of the additional compensation and that the plan still meets the liquidation test of 11 U.S.C. § 1325(a)(4). See Status Report, ECF No. 91.

### **COMPENSATION AND EXPENSES**

In this chapter 13 case, Peter Macaluso, attorney for the debtors, has applied for an allowance of additional compensation. The applicant requests that the court allow compensation in the amount of \$1,260.00. The Chapter 13 trustee has filed a non-opposition to the motion, ECF No. 87. The debtor has filed a declaration indicating his support of the requested compensation. See Declaration, ECF No. 85.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a trustee, examiner or professional person employed under § 327 or § 1103 and "reimbursement for actual, necessary expenses." 11 U.S.C. §

330(a)(1). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

#### **SUBSTANTIAL AND UNANTICIPATED POST-CONFIRMATION WORK**

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

In this case the applicant successfully modified the chapter 13 plan extending the plan length to 84 months as the debtor was impacted by the COVID-19 pandemic. The complications created by the pandemic were unanticipated at the time the case was filed and the extension of the plan to 84 months represents substantial work.

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis and allow additional compensation of \$1,260.00.

#### **CIVIL MINUTE ORDER**

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

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

Peter Macaluso's application for allowance of additional compensation under LBR 2016-1(c) has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the application,

IT IS ORDERED that the application is approved. The court allows the additional compensation in the amount of \$1,260.00. The court authorizes the fees to be paid through the plan by the chapter 13 trustee.

18. [22-21652](#)-A-13     **IN RE: RICHARD/VICKIE CAMPBELL**  
[DPC-1](#)

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

JULIUS CHERRY/ATTY. FOR DBT.

### **Tentative Ruling**

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

**Notice:** Continued from September 13, 2022

**Disposition:** Overruled

**Order:** Civil minute order

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

The hearing on the Chapter 13 trustee's objection to confirmation of the proposed plan was continued to allow for hearing on the debtors' Motion to Value Collateral (GC-1). The court granted the motion to value collateral.

At the prior hearing on the instant objection the court indicated as follows:

If the Trustee indicates there are no remaining issues, the Court intends to resolve this matter in favor of the Debtors by a Final Ruling.

Civil Minutes, ECF No. 24.

At the prior hearing the court ordered as follows:

IT IS FURTHER ORDERED that not later than October 18, 2022, the Trustee shall file a statement of position.

Order, ECF No. 27.

The Chapter 13 trustee has not filed a statement of position as ordered. Absent further objection by the trustee at the hearing on the motion the court will overrule the trustee's objection and confirm the proposed plan.

### **CIVIL MINUTE ORDER**

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

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

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

IT IS ORDERED that the objection is overruled. The debtors shall submit an order court confirming the plan which has been approved by the Chapter 13 trustee.

19. [22-22263](#)-A-13     **IN RE: JARVIS GARNER**  
[SKI-1](#)

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

SHERYL ITH/ATTY. FOR MV.  
EXETER FINANCE LLC VS.; RESPONSIVE PLEADING

#### **Tentative Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 2018 Mercedes Benz GLA 250

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

Exeter Finance, LLC seeks an order for relief from the automatic stay of 11 U.S.C. 362(a). The Chapter 13 trustee has filed a response in support of the motion. See Response, ECF No. 46. The debtor has not opposed the motion.

#### **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 one postpetition payment are past due. The total postpetition delinquency is approximately \$741.14. The prepetition delinquency is \$9,634.82.

The debtor has filed a plan which has not yet been confirmed. See Plan ECF No 41. The court has reviewed the plan and finds that the plan is not confirmable. First, the plan has not been filed using the Eastern District Form plan, EDC 3-080, which is required, LBR 3015-1(a). Second, the plan provides for monthly payments of \$350.00 per month for a period of 72 months which exceeds the maximum plan length of 60 months under 11 U.S.C. § 1322(d). Third, the plan calls for payments of \$350.00 per month to Exeter Finance but this represents the total amount of the plan payment. As the proposed plan payment does not account for trustee compensation the plan is not feasible under 11 U.S.C. § 1325(a)(6).

The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

#### **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.

Exeter Finance LLC's motion for relief from the automatic 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 vacated with respect to the property described in the motion, commonly known as 2018 Mercedes Benz GLA 250, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

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.

20. [22-21365](#)-A-13     **IN RE: RAFAEL/VIANA LARA**  
[KB-1](#)

MOTION TO AVOID LIEN OF FRANKLIN CREDIT CORPORATION  
9-26-2022    [\[66\]](#)

KIM BEATON/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### **Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

**Disposition:** Denied without Prejudice

**Order:** Civil minute order

The specific relief sought by the debtors is unclear to the court. The debtors appear to seek an order avoiding the lien of Franklin Credit Corporation under 11 U.S.C. § 522(f). See Motion, ECF No. 66, 4:11-13. Alternatively, it appears that the debtors seek an order valuing the collateral of Franklin Credit Corporation at \$0 under 11 U.S.C. § 506. *Id.*, 1:26. Finally, the debtors also appear to argue for equitable relief contending that the loan of Franklin Credit Corporation is extinguished. *Id.*, 2:5-13.

Despite the service and notice deficiencies discussed in this ruling the court notes that the Chapter 13 trustee and the impacted creditor, Franklin Credit Corporation, have each filed opposition to the motion. Thus, the argument that either service or notice is deficient is waived by the responding parties.

### **SERVICE**

As a contested matter, a motion to avoid lien is governed by Federal Rule of Bankruptcy Procedure 9014. Fed. R. Bankr. P. 9014(a). Rule 9014 requires Rule 7004 service of motions in contested matters. Fed. R. Bankr. P. 9014(b). Under Rule 7004, service on corporations and other business entities must be made by first class mail addressed "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Fed. R. Bankr. P. 7004(b)(3).

Service of the motion was insufficient. No certificate of service was filed in this matter as required by LBR 9014-1(e). Counsel for the debtors is cautioned that future non-compliance with the Eastern District's Local Rules of Practice may result in denial of relief and/or sanctions, LBR 1001-1(g).

### **NOTICE**

The notice filed with the motion incorrectly cites LBR "9013-1" as governing the notice in this matter. No such rule exists in the Local Rules of Practice for the Eastern District of California. Counsel for the debtors is again cautioned that future non-compliance with the Eastern District's Local Rules of Practice may result in denial of relief and/or sanctions, LBR 1001-1(g).

## **JUDICIAL NOTICE**

A court may take judicial notice of documents "on file in federal and state courts," as they are undisputed matters of public record. *See Harris v. County of Orange*, 682 F.3d 1126, 1131-32 (9th Cir. 2012) (citing *Bennett v. Medtronic, Inc.*, 285 F.3d 801, 803 n.2 (9th Cir. 2002)).

The court takes judicial notice of the documents appearing on the court's docket in the instant case. Fed. R. Evid. 201.

## **MOTION NOT SUPPORTED BY ANY EVIDENCE**

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

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

### Debtors' Motion

The motion alleges numerous facts regarding the debtors' contention that the loan owed to Franklin Credit Corporation was, or should be, "expunged" as follows:

Debtors filed a bankruptcy case in 2013. USBC ECD 13-20477 - E - 13C. BOSCO was deemed \$0.00 and unsecured in 2013. Debtors were told by BOSCO in 2013 that if they dismissed the Bankruptcy, BOSCO would give them a mortgage modification. Debtor's then counsel advised them to dismiss the bankruptcy. The Debtors did not know that dismissing the Bankruptcy would invalidate any orders granted in that bankruptcy. The Debtors' acted in good faith Debtors' former counsel has since been disbarred. In the meantime, from 2013 thru 2021, BOSCO never sent any bills or invoices, never moved to collect any monies from Debtors. Never contacted Debtors, there was no notations on Debtors credit reports. Debtors believed in GOOD FAITH, the obligation to BOSCO has been forever expunged. See Exhibit A attached hereto.

Motion, ECF No. 66, 2:5-13.

There is no declaration filed in support of the motion. Moreover, despite a reference to "Exhibit A" in the motion the court notes that no exhibits have been filed in support of the motion.

Counsel for the debtors is again cautioned that future non-compliance with the Eastern District's Local Rules of Practice may result in denial of relief and/or sanctions, LBR 1001-1(g).

Accordingly, the court will deny the motion without prejudice.

### **LIEN AVOIDANCE**

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

#### Creditor's Lien is Not a Judicial Lien

Under the Bankruptcy Code, a "judicial lien" is a "lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding." 11 U.S.C. § 101(36). A lien is a "charge against or interest in property to secure payment of a debt or performance of an obligation." *Id.* § 101(37).

Franklin Credit Corporation has filed Claim No. 10. The claim states that the debt owed to the creditor is a note secured by a mortgage. The property encumbered by the mortgage is 895 Wiegand Court, Dixon, California. This is the debtors' residence.

Because the note held by the claimant is secured by a mortgage on the debtors' residence it is not subject to avoidance as a judicial lien under 11 U.S.C. § 522(f). Absent evidence that the claim filed by Franklin Credit Corporation is incorrect the court denies the motion to avoid lien.

### **EQUITABLE RELIEF MUST BE SOUGHT BY ADVERSARY PROCEEDING**

A challenge to the validity, nature or extent of the creditors' lien must be raised by adversary proceeding. See Fed. R. Bankr. P. 7001(2).

The debtors argue that they were persuaded to dismiss their prior 2013 bankruptcy case because the loan with Franklin Credit Corporation would be modified thereafter. The debtors further argue that the conduct of Franklin Credit Corporation gives rise to an equitable argument that the debt owed by the debtors was "expunged". The type of relief sought by the debtors is not attainable via motion. Relief of this type is properly sought only by filing an adversary proceeding.

## **MOTION TO VALUE COLLATERAL**

The motion purports to value the collateral securing Franklin Credit Corporation's loan at \$0. However, the motion makes no allegations consistent with a motion to value collateral under 11 U.S.C. § 506. For example, there is no analysis or argument proffered regarding the value of the property, the nature and amounts of additional liens against the property as required. The court denies any motion to value collateral under 11 U.S.C. § 506 without prejudice.

## **CIVIL MINUTE ORDER**

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

The debtors' Motion to Avoid Lien, Motion to Value Collateral, and/or Motion for Equitable Relief has been presented to the court. Having considered the motion together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the motion is denied without prejudice.

21. [22-21669](#)-A-13     **IN RE: LINDSAY/LISA BRAKEL**  
[KMT-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
10-17-2022    [[92](#)]

MARK BRIDEN/ATTY. FOR DBT.  
GABRIEL HERRERA/ATTY. FOR MV.  
NICHOLAS LOPER VS.

## **Final Ruling**

**Motion:** Relief from Stay

**Disposition:** Denied without prejudice

**Order:** Civil minute order

The court will deny the motion without prejudice on grounds of insufficient service of process. A motion for relief from stay is a contested matter requiring service of the motion in the manner provided by Federal Rule of Bankruptcy Procedure 7004. Fed. R. Bankr. P. 4001(a)(1), 9014(b). Under Rule 7004, service on an individual must be made by first class mail addressed to the individual's dwelling house or usual place of abode or to the place where the individual regularly conducts a business or profession." Fed. R. Bankr. P. 7004(b)(1). A debtor in bankruptcy may be served before the case is dismissed or closed "at the address shown in the petition or to such other address as the debtor may designate in a filed writing." Fed. R. Bankr. P. 7004(b)(9).

Here, service of the motion was insufficient. The motion and supporting papers were not served on the debtors. See Certificate of Service, ECF No. 97, page 3, No. 5, Attachment 6B2.

## CIVIL MINUTE ORDER

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

Nicholas Loper's Motion for Relief From the Automatic Stay 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.

22. [22-21072](#)-A-13     **IN RE: TOM/EVERLYN NELSON**  
[KMM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
9-22-2022    [\[73\]](#)

RICHARD KWUN/ATTY. FOR DBT.  
AUSTIN NAGEL/ATTY. FOR MV.  
HARLEY-DAVIDSON CREDIT CORP. VS.; RESPONSIVE PLEADING

### Final Ruling

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 2017 Harley Davidson FXDB Street BOB

**Post-Petition Payments Due:** \$1,319.50

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

Harley Davidson Credit Corp. seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a).

### 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 postpetition payments are past due. The total postpetition delinquency is approximately \$1,319.50.

Alternatively, because the plan which has not been confirmed does not provide for the moving party's claim, the court concludes that

such property is not necessary to the debtor's financial reorganization. Therefore, relief from the automatic stay under § 362(d) (2) is warranted as well.

The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a) (3) will be waived. No other relief will be awarded.

#### **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.

Harley Davidson Credit Corp.'s motion for relief from the automatic 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 vacated with respect to the property described in the motion, commonly known as 2017 Harley Davidson FXDB Street BOB, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a) (3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

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.

23. [22-21976](#)-A-13     **IN RE: STEPHEN GLOVER**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
10-12-2022    [\[33\]](#)

#### **Tentative Ruling**

If the \$1 filing fee from the initial installment payment has not been paid in full by the time of the hearing, the case may be dismissed without further notice or hearing.

24. [22-21976](#)-A-13     **IN RE: STEPHEN GLOVER**  
[CJK-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK NATIONAL  
ASSOCIATION  
10-7-2022    [[27](#)]

CHRISTINA KHIL/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

U.S. Bank National Association objects to confirmation of the debtor's Chapter 13 plan. On October 18, 2022, the court sustained the Chapter 13 trustee's objection to confirmation of the plan, (DPC-1). See Order, ECF No. 36. This is the same plan to which U.S. Bank National Association objects. The debtor has not yet filed an amended plan. The court will overrule the objection as moot.

### **CIVIL MINUTE ORDER**

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

U.S. Bank National Association's Objection to Confirmation has been presented to the court. Having considered the objection together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the objection is overruled as moot.

25. [22-21182](#)-A-13     **IN RE: STACY TUCKER**  
[MET-1](#)

MOTION TO CONFIRM PLAN  
9-19-2022    [\[26\]](#)

MARY TERRANELLA/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### **Tentative Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Denied

**Order:** Civil minute order

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

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

### **PLAN FEASIBILITY**

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

### Plan Delinquency

The trustee indicates that the plan payments are delinquent in the amount of \$4,400.00, with another payment of \$2,200.00 due October 25, 2022. The plan cannot be confirmed if the plan payments are not current.

### **MATHEMATICAL FEASIBILITY**

The trustee opposes confirmation of the plan contending the plan is not mathematically feasible. The trustee calculates that the plan will take 68 months to fund as proposed.

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

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

### **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.

26. [22-21388](#)-A-13     **IN RE: KATHY ADAMS-BERRY**  
[DPC-2](#)

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

PETER CIANCHETTA/ATTY. FOR DBT.

### **Final Ruling**

**Objection:** Objection to Claim of Exemptions

**Notice:** Continued from September 13, 2022

**Disposition:** Overruled as moot

**Order:** Civil minute order

### **AMENDED SCHEDULES**

Rule 1009(a) allows a debtor to amend schedules as a matter of course at any time, even after a case has been reopened. See *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 393 (B.A.P. 9th Cir. 2003). This includes the right to amend the list of property claimed as exempt. *Martinson v. Michael (In re Michael)*, 163 F.3d 526, 529 (9th Cir. 1998).

A new 30-day period for objecting to exemptions begins to run when an amendment to Schedule C is filed. Fed. R. Bankr. P. 4003(b)(1).

The Chapter 13 trustee has objected to the debtor's claim of exemptions.

On October 24, 2022, the debtor filed an Amended Schedule C, ECF No. 34. Accordingly, the court will overrule the trustee's objection as moot.

### **CIVIL MINUTE ORDER**

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

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

The Chapter 13 trustee's Objection to the Claim of Exemptions has been presented to the court. Having considered the well-pleaded facts of the objection,

IT IS ORDERED that the objection is overruled as moot. The debtor has filed an amended Schedule C.

27. [22-21488](#)-A-13     **IN RE: CECILIA SMITH**  
[PGM-2](#)

MOTION TO CONFIRM PLAN  
9-19-2022    [\[35\]](#)

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

### **Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Granted

**Order:** Prepared by the movant, approved by the trustee

**Subject:** First Amended Chapter 13 Plan, filed September 19, 2022

### **DEFAULT OF RESPONDENT**

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

The debtor seeks confirmation of the First Amended Chapter 13 Plan, ECF No. 36. The plan is supported by Schedule I filed at the inception of the case and a supplemental Schedule J filed September 19, 2022, ECF No. 41. The Chapter 13 trustee has filed a non-opposition to the motion, ECF No. 43.

### **CHAPTER 13 PLAN CONFIRMATION**

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

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

28. [22-22189](#)-A-13      **IN RE: FLORA BROUGHTON**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
10-5-2022    [\[28\]](#)

PETER MACALUSO/ATTY. FOR DBT.

### **Tentative Ruling**

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

29. [22-22189](#)-A-13      **IN RE: FLORA BROUGHTON**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK  
10-12-2022    [\[31\]](#)

PETER MACALUSO/ATTY. FOR DBT.

### **Final Ruling**

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

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

**Disposition:** Continued to December 6, 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, objections, and supporting papers.

In this case creditors Bosco Credit, LLC and Deutsche Bank National Trust Company, filed requests for special notice. See Requests for Notice, ECF Nos. 10, 11. 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. 34.

The court will continue the hearing on the 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 December 6, 2022, at 9:00 a.m. Not later than November 8, 2022, the Chapter 13 trustee shall file and serve the objection and an amended notice of 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 22, 2022, the debtor shall file and serve written opposition, if any, to the trustee's objection. Should the debtor fail to file opposition the court will rule on the trustee's objection without further notice or hearing.

30. [22-22189](#)-A-13     **IN RE: FLORA BROUGHTON**  
[KMB-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY BOSCO CREDIT LLC  
10-13-2022    [\[35\]](#)

PETER MACALUSO/ATTY. FOR DBT.  
KELLI BROWN/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 December 6, 2022, at 9:00 a.m.

**Order:** Civil minute order

Bosco Credit, LLC objects to confirmation of the debtor's plan.

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

### **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 Deutsche Bank National Trust Company, filed a request for special notice. See Request for Notice, ECF No. 11. Thus, the objecting creditor is bound to serve its 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 Deutsche Bank National Trust Company as a party served with the notice as required. See Certificate of Service, ECF No. 37.

The court will continue the hearing on this 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.

Bosco Credit, LLC's objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the hearing on the objection is continued to December 6, 2022, at 9:00 a.m. Not later than November 8, 2022, Bosco Credit, LLC shall file and serve the objection and an amended notice of hearing on the debtor and all parties which have filed a request for special notice in this case.

IT IS FURTHER ORDERED that not later than November 22, 2022, the debtor shall file and serve written opposition, if any, to the trustee's objection. Should the debtor fail to file opposition the court will rule on the creditor's objection without further notice or hearing.

31. [18-22996](#)-A-13     **IN RE: BARRY/TSICHLIS DUNN**  
[DPC-4](#)

MOTION TO DISMISS CASE  
10-4-2022    [\[63\]](#)

MARY TERRANELLA/ATTY. FOR DBT.  
DAVID CUSICK/ATTY. FOR MV.

### Final Ruling

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

**Opposition Due:** October 18, 2022

**Opposition Filed:** Unopposed

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

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

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

## **CASE DISMISSAL**

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c) (1) and (6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$7,941.00 with a further payment of \$1,590.00 due October 25, 2022.

### **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.

## **SERVICE AND NOTICE**

As of November 1, 2022, the 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.

The Chapter 13 trustee filed a certificate of service in this case using EDC 7-005, ECF No. 66. The trustee has correctly served both the debtor and the creditor which requested special notice by first class mail.

### Service of Motion to Dismiss or Convert Under 11 U.S.C. § 1307(c)

A motion to dismiss a Chapter 13 case under 11 U.S.C. § 1307(c) is governed by Rule 1017 which provides "Rule 9014 governs a proceeding to dismiss or suspend a case, or to convert a case to another chapter, except under §§ 706(a), 1112(a), 1208(a) or (b), or 1307(a) or (b)." Fed. R. Bankr. P. 1017(f) (1). Rule 9014 prescribes the proper manner of service as follows:

*The motion shall be served in the manner provided for service of a summons and complaint by Rule 7004 and within the time determined under Rule 9006(d). Any*

written response to the motion shall be served within the time determined under Rule 9006(d). Any paper served after the motion shall be served in the manner provided by Rule 5(b) F. R. Civ. P.

Fed. R. Bankr. P. 9014(b) (emphasis added).

Rule 7004, allows service on the debtor "after a petition has been filed by or served upon the debtor and until the case is dismissed or closed, by mailing a copy of the summons and complaint to the debtor at the address shown in the petition or to such other address as the debtor may designate in a filed writing." Fed. R. Bankr. P. 7004(b) (9).

The Chapter 13 trustee filed a certificate of service in this case using EDC 7-005, ECF No. 66. The trustee has correctly served both the debtor, debtor's counsel, the United States Trustee, and the parties which requested special notice by first class mail. However, Form EDC 7-005 is incorrectly completed.

Service under Fed. R. Bankr. P. 7004, 9014(b), 1017(f)(1) is correctly indicated in the certificate of service as to the debtor and debtor's counsel.

#### Special Notice Parties

Conversely, service of the objection to confirmation on the special notice parties is made under Fed. R. Civ. P. 5, as *incorporated by* Fed. R. Bankr. P. 7005. Service is not made under Rule 7004, nor has it been accomplished under Rule 7004 in this case. Rule 5 allows for service on parties by first class mail. Thus, the trustee has properly served the objection on the special notice parties.

While the trustee has properly served the special notice creditors, he has not properly memorialized the service in the Certificate of Service. Box 6B and 6B2 should have been checked on page 3 indicating Rule 5 service where Rule 7004 was not applicable. In this case box 6B and 6B2 are left blank.

Additionally, while the certificate properly includes Attachment 6A1 describing Rule 7004 service on the debtor, it improperly includes or identifies the special notice creditors on the same list. To properly memorialize service on the special notice creditor(s) Attachment 6B2 must be included listing the special notice parties. Alternatively, the trustee could use the Clerk's Matrix of special notice creditors and attach that list as Attachment 6B3.

#### **CIVIL MINUTE ORDER**

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

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

The trustee's motion to dismiss this chapter 13 case has been presented to the court. Having entered the default of respondent debtor for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted because of the delinquency under the confirmed chapter 13 plan in this case. The court hereby dismisses this case.