

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

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

DAY: TUESDAY
DATE: NOVEMBER 2, 2021
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. [21-22911](#)-A-13 **IN RE: CURTIS KNAPPENBERGER**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
9-30-2021 [\[28\]](#)

MIKALAH LIVIAKIS/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

Order: Civil minute order

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 chapter 13 trustee objects to confirmation of the debtor's plan on numerous bases including: feasibility; failure to provide income documents; inaccurate and/or incomplete schedules and statements; and questionable classification of the claim secured by the debtor's vehicle.

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 \$650.00 with another payment of \$650.00 due in October 2021. The plan cannot be confirmed if the plan payments are not current.

The trustee filed a status report on October 26, 2021, indicating the plan payment for September 2021 had been received. The trustee also stated that the payment for October 25, 2021, in the amount of \$650.00 had not yet been made, ECF No. 33.

Inaccurate/Incomplete Schedules

The trustee has reviewed the statements and schedules filed by the debtor and on two occasions examined the debtor at the 341 meeting of creditors. The trustee contends that Schedule H is inaccurate as it fails to list the debtor's non-filing spouse as a co-debtor on appropriate obligations. Given that the non-filing spouse has filed a related chapter 13 case this designation regarding obligations is essential, as the chapter 13 trustee must accurately administer both plans. Schedule J is inaccurate as the debtor and his non-filing spouse are living in separate households yet there is only one Schedule J provided which shows all parties are living in the same household.

The trustee also notes incomplete information in the Statement of Financial Affairs regarding business income where the debtor is, or has been, involved in numerous businesses from 2019 to the present. Because the information is incomplete the trustee cannot properly evaluate the plan's suitability for confirmation.

Failure to Provide Income Information

The debtor has failed to provide the trustee with required or requested documents. See 11 U.S.C. § 521(a)(3)-(4). On August 30, 2021, 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 debtor failed to produce the following documents: business examination checklist, a form used by the trustee to evaluate a business operated by a debtor; 2 years of tax returns; pay advices for July 2021 (when the case was filed in August 2021); profit and loss statements for the six month period prior to the filing of the case; and bank statements for the 6 month period prior to filing the case.

The failure to provide income information 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 and pay advices 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).

GOOD FAITH

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 court notes that as of October 26, 2021, neither Schedules H and J, nor the Statement of Financial Affairs have been amended.

CLASSIFICATION OF SECURED CLAIM

The trustee contends that the classification of the claim of Travis Credit Union in Class 4 may be incorrect. The trustee believes the claim should be in Class 2 of the debtor's plan. It is unclear to the court if this classification is correct. The debtor's spouse has filed a related chapter 13 case in this district, case number 21-22885.

CIVIL MINUTE ORDER

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

Having considered the present objection to confirmation together with papers filed in support and opposition to it, and having heard the arguments of counsel, if any, and good cause appearing,

IT IS ORDERED that the objection is sustained.

2. [21-23412](#)-A-13 **IN RE: ANDREA/DOUGLAS COOK**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
10-13-2021 [\[13\]](#)

DENNISE HENDERSON/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.

3. [21-22316](#)-A-13 **IN RE: GEVORG DZHUGARYAN AND RUZANA**
SIRUNANIAN
[AP-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK
NATIONAL ASSOCIATION
8-12-2021 [\[41\]](#)

PETER MACALUSO/ATTY. FOR DBT.
WENDY LOCKE/ATTY. FOR MV.

No Ruling

4. [21-22316](#)-A-13 **IN RE: GEVORG DZHUGARYAN AND RUZANA**
SIRUNANIAN
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P
CUSICK
8-11-2021 [\[37\]](#)

PETER MACALUSO/ATTY. FOR DBT.

No Ruling

5. [21-22316](#)-A-13 **IN RE: GEVORG DZHUGARYAN AND RUZANA**
SIRUNANIAN
[PGM-1](#)

CONTINUED MOTION TO VALUE COLLATERAL OF U.S. BANK, N.A.
7-20-2021 [\[19\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

6. [21-20417](#)-A-13 **IN RE: DANE CUMMINGS**
[MOH-2](#)

MOTION TO SELL
10-11-2021 [\[83\]](#)

MICHAEL HAYS/ATTY. FOR DBT.

No Ruling

7. [21-23526](#)-A-13 **IN RE: JANET HAWK AND CALEB HENDRYX**
[MOH-1](#)

MOTION TO VALUE COLLATERAL OF CREDIT ACCEPTANCE CORPORATION
10-14-2021 [\[13\]](#)

MICHAEL HAYS/ATTY. FOR DBT.

Tentative Ruling

Motion: Value Collateral 2017 Dodge Caravan

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

Disposition: Granted

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the 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 their 2017 Dodge Caravan at \$14,794.00.

VALUATION OF COLLATERAL

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

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

In this case, the debtor seeks to value collateral consisting of a motor vehicle described as a 2017 Dodge Caravan. The debt secured by

the vehicle was not incurred within the 910-day period preceding the date of the petition. The court values the vehicle at \$14,794.00.

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 2017 Dodge Caravan has a value of \$14,794.00. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$14,794.00 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.

8. [20-23832](#)-A-7 **IN RE: APRIL STEVENS**
[DPC-2](#)

MOTION TO DISMISS CASE
9-21-2021 [\[40\]](#)

PETER MACALUSO/ATTY. FOR DBT.
CASE CONVERTED TO CHAPTER 7 ON 10/18/2021

Final Ruling

This case was converted to chapter 7 on October 18, 2021. The Motion will be denied as moot. No appearances are required.

9. [21-23136](#)-A-13 **IN RE: SONYA ALCARAZ**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
10-13-2021 [\[31\]](#)

PETER MACALUSO/ATTY. FOR DBT.

No Ruling

10. [21-23136](#)-A-13 **IN RE: SONYA ALCARAZ**
[JHK-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY SANTANDER CONSUMER USA
INC.

10-5-2021 [[20](#)]

PETER MACALUSO/ATTY. FOR DBT.
JOHN KIM/ATTY. FOR MV.

No Ruling

11. [21-23136](#)-A-13 **IN RE: SONYA ALCARAZ**
[PGM-1](#)

MOTION TO VALUE COLLATERAL OF SANTANDER CONSUMER USA, LLC
9-27-2021 [[15](#)]

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

12. [21-22138](#)-A-13 **IN RE: VICTOR GARCIA MONJARAZ AND RUTH**
BERROTERAN GARCIA
[CRG-1](#)

OBJECTION TO CLAIM OF LVNV FUNDING, CLAIM NUMBER 7
9-22-2021 [[30](#)]

CARL GUSTAFSON/ATTY. FOR DBT.

Final Ruling

Objection: Objection to Claim

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

Disposition: Overruled without prejudice

Order: Civil minute order

The debtors object to the allowance of Claim No. 7 filed by the LVNV
Funding, LLC, (Resurgent Capital Service).

INSUFFICIENT NOTICE

(b) Amount of Notice.

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

LBR 3007-1(b)(1).

The notice of motion, ECF No. 31, provides that opposition, if any, shall be in writing and shall be served and filed with the court by the responding party at least fourteen (14) days preceding the date or continued date of the hearing. This is the notice required under LBR 3007-1(b)(1). LBR 3007-1(b)(1) also requires 44 days' notice of any objection requiring written opposition.

The movant has only provided 41 days' notice of the objection. See Proof of Service, ECF No. 32. The objection will be overruled without prejudice.

CIVIL MINUTES ORDER

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

Debtors' Objection to the Claim of LVNV Funding, LLC, Resurgent Capital Service has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the objection is overruled without prejudice.

13. [21-22942](#)-A-13 **IN RE: DARRION BRATTON**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
9-27-2021 [\[21\]](#)

TIMOTHY WALSH/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

Order: Civil minute order

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 chapter 13 trustee objects to confirmation of the debtor's plan on numerous bases including: feasibility; failure to provide income documents; failure to provide social security documents; failure to file 2020 tax returns as evidenced by an estimated IRS claim; overextension of the plan based upon the IRS claim; failure to provide for the secured claim of Onemain Financial Group.

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

Debtor's 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 the plan payments are delinquent in the amount of \$569.00 with another payment of \$569.00 due in October 2021. The plan cannot be confirmed if the plan payments are not current. The plan is not feasible.

Failure to Provide Income Information

The debtor has failed to provide the trustee with required or requested documents. See 11 U.S.C. § 521(a)(3)-(4). The trustee reports that the debtor failed to provide pay advices for the 60 day period prior to the filing of the bankruptcy case, and also failed to provide the most recently filed federal tax return. These documents are required to be provided to the trustee under § 521 of the Bankruptcy Code. They allow the trustee to properly prepare for the 341 meeting of creditors and to perform his duties under the code.

The failure to provide income information 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 tax returns and pay advices 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 SOCIAL SECURITY INFORMATION

Debtors are required to provide proof of their social security numbers at the meeting of creditors.

b) Individual debtor's duty to provide documentation

(1) Personal identification

Every individual debtor shall bring to the meeting of creditors under § 341:

(A) a picture identification issued by a governmental unit, or other personal identifying information that establishes the debtor's identity; and

(B) evidence of social-security number(s), or a written statement that such documentation does not exist.

Fed. R. Bankr. P. 4002.

The debtor failed to present this information to the trustee at the 341 meeting of creditors as required, thereby preventing the trustee from carrying out his duties.

FAILURE TO FILE TAX RETURNS

The court may not confirm a plan unless "the debtor has filed all applicable Federal, State, and local tax returns as required by section 1308."

11 U.S.C. § 1325(a) (9)

(a) Not later than the day before the date on which the meeting of the creditors is first scheduled to be held under section 341(a), if the debtor was required to file a tax return under applicable nonbankruptcy law, the debtor shall file with appropriate tax authorities all tax returns for all taxable periods ending during the 4-year period ending on the date of the filing of the petition.

11 U.S.C. § 1308(a).

The trustee questions whether the debtor has filed all tax returns which have come due in the past four years as the Internal Revenue Service has filed a Proof of Claim, Claim No. 5, which shows an estimated tax due for the 2020 tax year. If the debtor has not filed a 2020 tax return, and was required to do so, then the plan may not be confirmed as this contravenes the provisions of 11 U.S.C. §§ 1325(a) (9) and 1308.

FAILURE TO PROVIDE FOR SECURED CLAIM

The debtor's plan fails to provide in any way for the claim of Onemain Financial Group, LLC. Thus, the court is unable to determine if the obligation is to be paid by the debtor either inside or outside the plan, a third party, or surrendered. Each option directly impacts the debtor's budget which in turn impacts the feasibility of the plan.

The trustee states that at the 341 meeting of creditors the debtor indicated his intention to surrender the vehicle which is the collateral for Onemain's claim. The trustee contends that the obligation should be provided for in Class 3 of the plan. The court agrees with the trustee.

The debtor's failure to provide for any secured creditor in the plan calls into question the feasibility of the plan. How a debt will be satisfied and who might make the payment on a secured obligation is an essential component of a debtor's budget in a chapter 13 case.

CIVIL MINUTE ORDER

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

Having considered the present objection to confirmation together with papers filed in support and opposition to it, and having heard the arguments of counsel, if any, and good cause appearing,

IT IS ORDERED that the objection is sustained.

14. [21-22942](#)-A-13 **IN RE: DARRION BRATTON**
[DPC-2](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
9-27-2021 [\[25\]](#)

TIMOTHY WALSH/ATTY. FOR DBT.

Final Ruling

Objection: Objection to Claim of Exemptions for Failure to File Spousal Waiver

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

Disposition: Sustained

Order: Prepared by objecting party

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this motion. None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true.

TeleVideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917-18 (9th Cir. 1987).

The debtor has claimed exemptions under section 703.140(b) of the California Code of Civil Procedure. The trustee objects to the debtor's claim of exemptions because the debtor has not filed the required spousal waiver in writing of the right to claim the exemptions allowed under applicable provisions of Chapter 4 of Part 2, Title 9, Division 2 of the California Code of Civil Procedure, excluding the exemptions allowed under section 703.140(b). See Cal. Civ. Proc. Code §§ 703.140(a)(2), (b).

The debtor is married but has not filed a joint petition with debtor's spouse. The debtor may not claim exemptions under section 703.140(b) because both spouses have not filed the required spousal waiver described in section 703.140(a)(2).

15. [20-24947](#)-A-13 **IN RE: DANIEL MCARTHEY**
[GC-2](#)

CONTINUED OBJECTION TO CLAIM OF HOME POINT FINANCIAL
CORPORATION, CLAIM NUMBER 4
4-12-2021 [\[69\]](#)

JULIUS CHERRY/ATTY. FOR DBT.

Final Ruling

At the request of the parties the court has continued this matter to January 5, 2022, at 9:00 a.m., ECF No. 107. No appearance is required by the parties.

16. [20-24947](#)-A-13 **IN RE: DANIEL MCARTHEY**
[GC-3](#)

CONTINUED OBJECTION TO NOTICE OF POSTPETITION MORTGAGE FEES,
EXPENSES, AND CHARGES
4-21-2021 [\[74\]](#)

JULIUS CHERRY/ATTY. FOR DBT.

Final Ruling

At the request of the parties the court has continued this matter to January 5, 2022, at 9:00 a.m., ECF No. 108. No appearance is required by the parties.

17. [19-23948](#)-A-13 **IN RE: C/SANDRA SMITH**
[CYB-4](#)

MOTION TO WAIVE SECTION 1328 CERTIFICATE
REQUIREMENT, CONTINUE CASE ADMINISTRATION, SUBSTITUTE PARTY,
AS TO DEBTOR
10-9-2021 [\[76\]](#)

CANDACE BROOKS/ATTY. FOR DBT.

Tentative Ruling

Motion: Substitution of Representative, Continued Administration,
Waiver of Personal Financial Management and Waiver of Certifications

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

Disposition: Granted

Order: Civil minute order

Debtor, Sandra Jo Smith prays appointment of a personal representative, substitution of the representative, continued administration, waiver of the post-petition education requirement and the § 1328 certification for her now deceased spouse Todd Smith, aka Christopher Todd Smith.

DEFAULT

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).

DISCUSSION

Suggestion of Death

When a chapter 13 debtor dies, counsel for the debtor shall file a Suggestion of Death.

Notice of Death. In a bankruptcy case which has not been closed, a *Notice of Death of the debtor* [Fed. R. Civ. P. 25(a), Fed. R. Bankr. P. 7025] shall be filed within sixty (60) days of the death of a debtor by the counsel for the deceased debtor or the person who intends to be appointed as the representative for or successor to a deceased debtor. The Notice of Death shall be served on the trustee, U.S. Trustee, and all other parties in interest. A copy of the death certificate (redacted as appropriate) shall be filed as an exhibit to the Notice of Death.

LBR 1016-1(a) (emphasis added); see also, Fed. R. Civ. P. 25(a), *incorporated by* Fed. R. Bank. P. 7025, 9014(c).

Here, the debtor, Sandra Jo Smith, has filed a notice of death which was filed and served on the United States trustee, the chapter 13 trustee, and all interested parties on September 1, 2021. See ECF Nos. 73-77.

Substitution of Representative

Upon the death of the debtor, a personal representative for the debtor must be substituted as the real party in interest.

An action must be prosecuted in the name of the real party in interest. The following may sue in their own names without joining the person for whose benefit the action is brought: (A) an executor; (B) an administrator; (C) a guardian; (D) a bailee; (E) a trustee of an express trust; (F) a party with whom or in whose name a contract has been made for another's benefit; and (G) a party authorized by statute.

Fed. R. Civ. P. 17(a), *incorporated by* Fed. R. Bankr. P. 7017, 9014(c) (emphasis added).

Where the debtor dies during the administration of a chapter 7 case, the action is not abated, and administration shall continue. Fed. R. Bankr. P. 1016. But a representative for the now deceased debtor needs to be appointed. And that appointment process is implemented by Rule 25(a).

If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.

Fed. R. Civ. P. 25, *incorporated by* Fed. R. Bankr. P. 7025, 9014(c) and LBR 1016-1(a).

Sandra Jo Smith requests that she be substituted as the personal representative of her now deceased spouse. She has possession and control of her deceased spouse's assets and obligations as all were held as community property. Mrs. Smith is intimately familiar with the issues arising in the bankruptcy case as she is a co-debtor.

Continued Administration

Continued administration on behalf of a deceased chapter 13 debtor is discretionary.

Death or incompetency of the debtor shall not abate a liquidation case under chapter 7 of the Code. In such event the estate shall be administered, and the case concluded in the same manner, so far as possible, as though the death or incompetency had not occurred. *If a reorganization, family farmer's debt adjustment, or individual's*

debt adjustment case is pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred.

Fed. R. Bankr. P. 1016 (emphasis added).

Sandra Jo Smith has stated that she believes the interests of the estate are best served by continuing in chapter 13. She desires to complete her plan which provides for payment of secured, priority and unsecured obligations. Mrs. Smith will remain as a petitioner and is able to prosecute the case for her own benefit and the benefit of all parties and the bankruptcy estate.

Waiver of Post-Petition Education Requirement

In most case, individual chapter 7 debtors must complete a post-petition personal financial management course to receive a discharge. 11 U.S.C. 727(a)(11).

The court notes that debtor Todd Smith completed the personal financial management course required under 11 U.S.C. § 727(a)(11) and filed the certificate evidencing such, ECF No. 15.

WAIVER OF § 1328 CERTIFICATIONS

The motion requests a waiver of the requirement to complete and file § 1328 certifications, including certifications concerning domestic support obligations, prior bankruptcy discharges, exemptions exceeding the amount stated in § 522(q)(1) and pending criminal or civil proceedings described in § 522(q)(1)(A) and (B). These certifications are generally required for debtors by § 1328(a) and Local Bankruptcy Rule 5009-1(b) and (c). The court will waive the requirement that the deceased debtor file certifications concerning compliance with § 1328, including Forms EDC 3-190 and EDC 3-191 required under LBR 5009-1

CIVIL MINUTE ORDER

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

Sandra Jo Smith's motion has been presented to the court. Having entered the default of the respondents and 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 the motion is granted; and

IT IS FURTHER ORDERED that (1) Sandra Jo Smith is the representative of Todd Smith, a.k.a. Christopher Todd Smith, a.k.a. C. Todd Smith and is substituted in his place and stead; (2) continued administration is appropriate; and (3) as to Todd Smith, a.k.a. Christopher Todd Smith, a.k.a. C. Todd Smith, the certifications required by 11 U.S.C. § 1328 are waived.

18. [18-27055](#)-A-13 **IN RE: JEFFREY/LISA PURCELL**
[MRL-5](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF LIVIAKIS LAW
FIRM FOR MIKALAH LIVIAKIS, DEBTORS ATTORNEY(S)
10-11-2021 [\[89\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.

Final Ruling

Application: Allowance of Additional Compensation and Expense
Reimbursement after Plan Completion

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

Disposition: Continued to January 5, 2022, at 9:00 a.m.

Order: Civil minute order

FACTUAL BACKGROUND

In this chapter 13 case, Mikalah Liviakis has applied for an allowance of additional compensation. The application requests that the court allow compensation in the amount of \$1,725.00.

The debtors filed this chapter 13 case on November 9, 2008. The chapter 13 plan called for a 100% distribution to unsecured creditors in the approximate amount of \$44,957.00 and a plan term of 60 months with lump sum payments made annually in the amount of \$5,000.00, in addition to the regular monthly plan payments of \$1,595.00. See ECF No. 4. Midway through the plan term the chapter 13 plan was completed after the debtors sold a parcel of real property and the funds were tendered to the chapter 13 trustee. The trustee paid all creditors in full pursuant to the plan after a minor modification of the plan was made ex-parte by trustee's counsel on August 18, 2021. See ECF No. 25.

The instant application for attorney fees requests compensation for the following services: "Services include drafting the Motion/Application to Approve Sale of real estate, review sale documents, and oppositions. The sale of sale (sic) allowed Debtors to pay all claims in the case and complete the chapter plan ahead of schedule." See ECF No. 89, 3:7-9. The court notes that there was no opposition to this motion. The chapter 13 trustee filed a non-opposition to the motion in which he requested that an item be clarified in the order on the motion.

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).

ATTORNEY FEES PAID

The confirmed plan provided that the applicant was paid \$6,000.00 prior to the filing of the case. It also provided for \$0 of additional fees to be paid as an administrative expense through the plan. As a result, the compensation and expenses requested by this application are not provided for in the plan. They are sought in addition to the amounts provided in the confirmed plan.

In addition to the attorney fees pursuant to LBR 2016-1(c) the court ordered additional fees on January 20, 2021, ECF No. 60, in the amount of \$4,725.00. These fees were ordered for the work which applicant performed on behalf of the debtors in resolving claims filed against them. The applicant negotiated and represented debtors in filing a Motion To Compromise Controversy (MRL-1) in the matters of the "Irish Fire Claimants". The chapter 13 trustee reports that those attorney fees have been paid in full.

According to the trustee, the debtor has completed the term of the confirmed plan in this case. The trustee filed his Final Report and Accounting, ECF No. 86, on October 8, 2021. The case is in process of closing. All funds derived from the completed plan have been transmitted by the trustee to creditors and parties in interest. As a result, the debtor's discharge will likely be entered soon after the administrative procedures set forth by Local Rule 5009-1 are complete unless an objection to the debtor's eligibility to discharge is filed. LBR 5009-1(a)-(d).

APPLICATION FOR ADDITIONAL ATTORNEY FEES

Standards for Approval under § 330(a)

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 13 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

In this case the court finds that there is insufficient evidence to support the allowance of additional attorney fees.

First, the motion is not accompanied by a declaration of the debtors evidencing their agreement to pay the fees requested.

Second, the applicant has not demonstrated that the requested compensation and expenses are for work which was "substantial", under LBR 2016-1(c)(3). Given that the applicant was paid \$6,000.00 when he opted in to the flat fee payment arrangement, and that the only other motion work required in this case was the Motion to Compromise Controversy, for which counsel has been paid under separate order, the court requires additional evidence supporting the request.

If the applicant desires an order authorizing payment of compensation as requested the court requires an accounting of the

services provided and the time spent in preparing the case for filing up to the filing of the Motion to Sell. This accounting should not include services for which the applicant has already been compensated because of his work on the Motion to Compromise Controversy.

The court will continue this motion to allow the applicant to augment the record as indicated above.

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.

Mikalsh Liviakis' application for allowance of final compensation and reimbursement of expenses has been presented to the court. Having considered the application and any papers filed in support and opposition to the application,

IT IS ORDERED that the hearing on the application is continued to January 5, 2022, at 9:00 a.m.;

IT IS FURTHER ORDERED that not later than December 14, 2021, the applicant shall file and serve any additional evidence in support of this motion on all interested parties.

19. [21-22963](#)-A-13 **IN RE: RAYMOND MINIFIE**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK
10-13-2021 [\[15\]](#)

SCOTT JORDAN/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

Order: Civil minute order

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 chapter 13 trustee has filed an objection to confirmation of the debtor's plan on numerous bases including: feasibility; failure to provide complete name in the petition; failure to provide evidence

on the record of the likelihood and/or timing of receipt of funds from a probate estate.

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

Schedule J

The plan initially calls for payments of \$100.00 per month for 13 months. Debtor's Schedule J filed at the inception of the case showed insufficient funds to make this payment. The debtor has since amended his Schedule I showing income sufficient to make exactly a \$100.00 payment.

However, the Amended Schedule I shows that the debtor will receive \$591.00 from family to increase his income sufficient to make the plan payment. No additional evidence has been submitted by the debtor or his family members who plan to provide the funds. At the very least the court requires evidence showing that the debtor's family has both the desire and the means to make such a significant contribution for 13 months.

The court will sustain this objection.

Lump Sum Payment

Debtor's plan calls for a lump sum payment sufficient to pay the unsecured creditors 100% in the 13th month of the plan. The trustee objects claiming that there is insufficient evidence indicating that the debtor will receive sufficient funds or receive the funds by the 13th month of the plan.

At the inception of the case the debtor filed Schedule A/B, ECF No. 1. The debtor disclosed a probate proceeding, identified by county and case number, in which he anticipated receiving an award of \$335,584.00 in value. The court is satisfied with the evidence provided by the debtor regarding the inheritance.

The court will overrule this portion of the trustee's objection.

INCOMPLETE NAME ON PETITION

The trustee objects to confirmation as the debtor failed to provide his complete name on the petition. The debtor has since filed an Amended Petition disclosing his middle name. The court will overrule this portion of the trustee's objection.

CIVIL MINUTE ORDER

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

Having considered the present objection to confirmation together with papers filed in support and opposition to it, and having heard the arguments of counsel, if any, and good cause appearing,

IT IS ORDERED that the objection is sustained, the plan is not feasible.

20. [21-20864](#)-A-13 **IN RE: HEATH/CHRISTIAN FULKERSON**
[GMR-1](#)

CONTINUED OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS AND/OR
MOTION FOR TURNOVER OF PROPERTY
6-22-2021 [\[80\]](#)

RESPONSIVE PLEADING

Final Ruling

Motion: Objection to Debtors' Claim of Exemptions and Motion for Turnover of Property

Notice: Continued from September 21, 2021

Disposition: Continued to November 16, 2021, at 9:00 a.m.

Order: Civil minute order

The chapter 7 trustee filed this objection to the claim of exemptions by the debtors and for turnover of property. The debtors subsequently converted his case to a chapter 13.

This matter was continued to allow the chapter 13 trustee to examine the debtors at the 341 meeting of creditors and determine his position regarding the exemptions claimed by the debtors and the motion for turnover which has been raised by the chapter 7 trustee.

The chapter 13 trustee was ordered to file a statement of position not later than October 19, 2021.

The chapter 13 trustee filed his statement and declaration on October 19, 2021, ECF Nos. 155-156. In his statement the trustee reports that the debtors failed to appear at the 341 meeting of creditors on October 7, 2021. The trustee further reports that the debtors are delinquent pursuant to the chapter 13 plan filed on June 28, 2021, which calls for payments of \$2,500.00 per month. The trustee has filed a motion to reconvert the case. The hearing on the motion to reconvert to Chapter 7 is set for November 16, 2021, at 9:00 a.m. The court will continue this matter to coincide with the chapter 13 trustee's motion to reconvert.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the Objection to Debtors' Claim of Exemptions and Motion for Turnover of Property is continued to November 16, 2021, at 9:00 a.m.

21. [19-23669](#)-A-13 **IN RE: JACK/MARYANNE JODOIN**
[DPC-1](#)

CONTINUED MOTION TO DISMISS CASE
8-24-2021 [\[87\]](#)

LUCAS GARCIA/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

This matter was continued from September 21, 2021, to allow the debtors to meet with their attorney and affirmatively state their position regarding the trustee's motion to dismiss. The debtors filed an opposition to the motion on October 19, 2021, ECF No. 96. The opposition is not supported by a declaration of either debtor but rather consists of statements proffered by debtors' attorney.

PLAN DELINQUENCY

The chapter 13 trustee has moved to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtors have failed to make all payments due under the plan. The trustee

contends that the debtor is delinquent in the amount of \$550.00 with an additional \$275.00 due in September 2021.

The opposition *id.* at 3:7-9, acknowledges that plan payments are delinquent and states that the debtors will catch up with the payments once they receive certain refunds of rental deposits. The court notes that the identical opposition was proffered in the opposition filed by the debtors on September 6, 2021, ECF. No. 91.

The debtor's opposition does not fully resolve the grounds for dismissal. A delinquency still exists as of the date of the opposition. A statement of intent to pay the delinquency on or before a future date is not equivalent to cure of the delinquency. The court is unable to deny the motion given the outstanding delinquency.

PLAN OVER EXTENSION

The trustee also contends that the plan is overextended and will take 85 months to complete, indicating that the debtors are in violation of Section 6.04 of the plan.

The opposition states that the plan overextension is caused by the claim filed by the IRS, Claim No. 17-1. The debtors dispute the amount of the claim and state that they are communicating with the IRS. Debtors have indicated that they will object to the claim prior to the hearing on this motion if the IRS has not otherwise amended its Proof of Claim. See ECF No. 96, 3:18-24. The court notes that as of October 26, 2021, that no objection to the claim of the IRS has been filed.

The debtors have failed to explain why they did not previously contact the IRS or object to the claim which they believe is incorrect. The Notice of Filed Claims was filed on December 6, 2019, ECF No. 71, nearly two years ago. The IRS claim is listed in the document.

The debtor's opposition regarding the IRS claim does not fully resolve the grounds for dismissal. A statement that the debtors intend to file an objection to a claim when they have had notice of the claim for nearly two years, is not evidence that the debtors are acting in proper prosecution of their bankruptcy case. The court will dismiss this case.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. Payments are delinquent in the amount of \$550.00. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). Additionally, the debtors plan will not complete within the 60 months required by 11 U.S.C. § 1322(d) and the debtors have failed to object to the claim of the IRS or file a modified plan. The court hereby dismisses this case.

22. [19-23272](#)-A-13 **IN RE: ALLEN FOWLER**
[SS-7](#)

MOTION TO APPROVE LOAN MODIFICATION
10-18-2021 [\[101\]](#)

SCOTT SHUMAKER/ATTY. FOR DBT.

Final Ruling

Motion: Approval of Mortgage Loan Modification

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

Disposition: Continued to December 1, 2021, at 9:00 a.m.

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). 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).

LOAN MODIFICATION

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

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

The court will continue the hearing on this motion to coincide with the hearing on the debtor's Motion to Modify Plan for the following reasons. The terms presented in the Exhibits indicate that the monthly payment is \$2,614.69, ECF No. 104. The debtor's declaration and the motion both state that the debtor was orally informed that

the monthly payment is \$2,880.90, ECF Nos. 101 and 103. Until this discrepancy is resolved the court will not grant the motion.

The court notes that the feasibility of the proposed modified plan relies upon the granting of the motion approving the loan modification.

CIVIL MINUTE ORDER

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

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

The court has reviewed the present motion for approval of a mortgage loan modification agreement between the debtor and the secured creditor named in the motion. Having considered the motion and any papers filed in support and opposition to the motion,

IT IS ORDERED that the motion is continued to December 1, 2021, at 9:00 a.m.

IT IS FURTHER ORDERED that not later than November 16, 2021, the debtor shall file and serve on all interested parties, evidence of the correct payment due under the proposed loan modification and the lender's written agreement to the payment. If this evidence is not provided the court may deny this motion without further notice or hearing.

23. [21-23472](#)-A-13 **IN RE: BARRY/GINA ROTHMAN**
[MET-1](#)

MOTION TO VALUE COLLATERAL OF TRAVIS CREDIT UNION
10-13-2021 [\[15\]](#)

MARY TERRANELLA/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

Subject Property: 2017 Acura RDX

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the respondent is entered. The court considers the record, accepting well-pleaded facts as true.

TeleVideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917-18 (9th Cir. 1987).

VALUATION OF COLLATERAL

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

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).

Here, the debtor does not argue that the collateral is outside the scope of the hanging paragraph. Instead, the debtor argues that only a portion of the respondent's claim, secured by the subject collateral is unprotected by the hanging paragraph because it resulted from financing for the negative-equity portion of the vehicle traded in at the time of the debtor's purchase of the present collateral.

The Ninth Circuit has held "that a creditor does not have a purchase money security interest in the 'negative equity' of a vehicle traded in during a new vehicle purchase." *In re Penrod*, 611 F.3d 1158, 1164 (9th Cir. 2010). Because of this, the portion of an automobile lender's claim attributable to negative-equity financing is not secured by a purchase money security interest (PMSI). Thus, negative-equity debt is not protected by the hanging paragraph.

The court adopts the pro-rata approach supported by the cases: the percentage of the original principal balance of the debt secured by a PMSI is multiplied by the present balance of the debt owed to respondent on its claim. The product is the amount of the respondent's present claim that is secured by a PMSI (the "PMSI portion") and protected by the hanging paragraph of § 1325(a). The negative-equity portion of the claim may be treated as unsecured so long as the value of the collateral does not support it.

The original principal balance of the debt was \$32,232.67. The portion of the original principal balance secured by a PMSI was

\$24,216.46. So, 75.13% of the original principal balance was secured by a PMSI.

Multiplying this percentage by the respondent's present claim of \$25,792.00 equals \$19,377.53. This amount is the PMSI portion of the claim that cannot be stripped down. The negative-equity portion of the respondent's claim is not protected by the hanging paragraph, and, as a result, may be treated as an unsecured claim if it is uncollateralized.

The value of the subject collateral is \$20,000.00.

The vehicle's value is more than the PMSI-portion of respondent's claim but less than the total amount of this claim. The negative-equity portion of the claim that exceeds the value of the collateral is unsecured, and it is unprotected by the hanging paragraph. The respondent has a secured claim of \$20,000.00 (equal to the value of the collateral) and an unsecured claim for the balance of its claim.

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 2017 Acura RDX has a value of \$20,000.00. The respondent has a secured claim in the amount of \$20,000.00 equal to the value of the collateral. The respondent has a general unsecured claim for the balance of the claim.

24. [21-23474](#)-A-13 **IN RE: PATRICIA MICHAEL**
[TJW-1](#)

MOTION TO EXTEND AUTOMATIC STAY
10-13-2021 [\[10\]](#)

TIMOTHY WALSH/ATTY. FOR DBT.

Tentative Ruling

Motion: Extend the Automatic Stay

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

Disposition: Denied

Order: Civil minute order

The debtor requests extension of the automatic stay under 11 U.S.C. § 362(c) (3) (B) .

FACTUAL BACKGROUND

The debtor filed this case after her prior chapter 13 case was dismissed for delinquent plan payments. The previous case 19-25849 was filed on September 18, 2019, and dismissed on August 6, 2021. Her current plan proposes payment of \$6,400.00 per month.

The debtor has filed a declaration in support of this motion which states that she lost income during her prior case because of reduced income during the COVID-19 pandemic, ECF No. 12. The debtor states that her boarders either left or were unable to pay her. A significant portion of the debtor's income is attributed to monies she receives from boarders by renting rooms in her home. The debtor's declaration in support of this motion states that she usually had 7 boarders, *id.* at 2:14-15.

In her prior chapter 13 case the debtor's Schedule I showed her monthly income as follows: \$1650.94 from pension or retirement; \$5,597.50 from room rental; and \$1,300.00 from her son's contribution. Case No. 2019-25849, ECF No. 12, Schedule I, page 2.

In this case the income on Schedule I, ECF No. 1, shows monthly income as follows: \$1,618.23 from pension or retirement; \$5,396.83 from boarders; and \$1,279.70 from "Airbnb".

The declaration in support of this motion lacks specificity. It fails to state how many boarders are currently renting rooms from the debtor and it fails to describe at all the "Airbnb" income which the debtor lists at \$1,279.70 per month on Schedule I. The Statement of Financial Affairs at Item 5, ECF No.1, shows that the debtor has only received \$1,038.70 year to date. The court concludes that this is either very recent or sporadic income. In either event, the "Airbnb" income appears speculative.

11 U.S.C. § 362(c) (3) (B)

Upon request of a party in interest, the court may extend the automatic stay where the debtor has had one previous bankruptcy case

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

Case Presumed Filed Not in Good Faith

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

The presumption arises in this case. Debtor's previous chapter 13 plan was confirmed on February 7, 2020. The chapter 13 trustee's motion to dismiss for plan delinquency in the amount of \$11,860.47 was granted on August 4, 2021.

Debtor Has Not Rebutted the Presumption

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

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

Debtor's supporting declaration does not point to any substantial change in the personal and financial affairs of the debtor since the dismissal of her previous case. The supporting declaration states that the situation caused with her boarders by the pandemic has lessened and that it appears that the rental situation will continue to be good; however, such assertions lack specificity. The debtor has failed to explain the income in her Schedule I, or to indicate how many boarders she has, how much money they are obligated to pay, or to explain the source of new income from "Airbnb". Thus, the debtor has not provided facts constituting a substantial change in personal or financial affairs.

The court also notes that the debtor's gross income on Schedule I from all sources is \$8,431.76. Neither Schedule I nor J makes any provision for payment of income taxes, which would be due as a result of the rent and "Airbnb" income. The proposed plan payment is \$6,400.00 per month. The plan payment represents 75% of the debtor's gross monthly income. Where the schedules evidence a plan which is not feasible the motion will be denied.

CIVIL MINUTE ORDER

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

The debtor's Motion to Extend the Automatic Stay has been presented to the court. Having considered the motion together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the motion is denied.

25. [21-20576](#)-A-13 **IN RE: MARK GUZMAN**
[MS-1](#)

MOTION TO MODIFY PLAN
9-17-2021 [[19](#)]

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

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Continued to December 1, 2021, at 9:00 a.m.

Order: Prepared by movant, approved by the trustee

Subject: First Modified Chapter 13 Plan, filed September 17, 2021

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).

CHAPTER 13 PLAN MODIFICATION

Chapter 13 plan modification is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. "[T]he only limits on modification are those set forth in the language of the Code itself, coupled with the bankruptcy judge's discretion and good judgment in reviewing the motion to modify." *In re Powers*, 202 B.R. 618, 622 (B.A.P. 9th Cir. 1996).

Chapter 13 debtors seeking plan modification have the burden of proving that all requirements of § 1322(a) and (b) and § 1325(a) have been met. See 11 U.S.C. §§ 1322(a)-(b), 1325(a), 1329(b)(1); see also *In re Powers*, 202 B.R. at 622 ("[Section] 1329(b)(1) protects the parties from unwarranted modification motions by ensuring that the proposed modifications satisfy the same standards as required of the initial plan."); see also *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994); *In re Andrews*, 49 F.3d 1404, 1408 (9th Cir. 1995).

The court finds that the debtor has not yet sustained this burden of proof. The most recently filed Schedules I and J are dated February 19, 2021, some 8 months ago, ECF No. 1. The court cannot adequately assess the feasibility of the debtor's plan without evidence of his current budget. The court will continue this motion to allow the debtor to augment the evidentiary record with amended Schedules I and J.

CIVIL MINUTE ORDER

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

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

The court has reviewed the debtor's motion to modify plan. Having considered the motion and any papers filed in support and opposition to the motion,

IT IS ORDERED that the motion is continued to December 1, 2021, at 9:00 a.m.

IT IS FURTHER ORDERED that not later than November 16, 2021, the debtor shall file and serve on all interested parties, amended Schedules I and J. If the schedules are not timely filed, the court may deny this motion without further notice or hearing.

26. [19-23578](#)-A-13 **IN RE: CATHERINE BYRD**
[PGM-4](#)

MOTION TO SELL
10-1-2021 [\[70\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

27. [19-23578](#)-A-13 **IN RE: CATHERINE BYRD**
[PGM-5](#)

MOTION FOR APPROVAL TO PURCHASE REAL PROPERTY
10-1-2021 [\[76\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

28. [21-22478](#)-A-13 **IN RE: ROBIN WILDER**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
10-5-2021 [\[20\]](#)

THOMAS AMBERG/ATTY. FOR DBT.
10/12/21 FINAL INSTALLMENT PAID \$128

Final Ruling

The final installment having been paid, the order to show cause is discharged. The case will remain pending.

29. [21-22778](#)-A-13 **IN RE: JOHN BLAS AND RACHEL SILGUERO**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK
9-13-2021 [\[16\]](#)

MOHAMMAD MOKARRAM/ATTY. FOR DBT.

Final Ruling

This matter was continued from October 5, 2021, to allow the parties to resolve the trustee's objection to confirmation. On October 23, 2021, the trustee filed a statement indicating that he no longer opposed confirmation of the debtor's plan, ECF No. 23. On October

25, 2021, the court signed the Order Confirming Plan, ECF No. 25. This matter will be removed from the calendar as moot, no appearances are required.

30. [20-23982](#)-A-13 **IN RE: SHIRLEY KEHN**
[FF-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-5-2021 [[18](#)]

DALE ORTHNER/ATTY. FOR DBT.
GARY FRALEY/ATTY. FOR MV.
VIOLET DELLASANTA VS.; RESPONSIVE PLEADING

No Ruling

31. [21-22485](#)-A-13 **IN RE: SCOTT LOVE**
[MOH-2](#)

MOTION TO CONFIRM PLAN
9-2-2021 [[37](#)]

MICHAEL HAYS/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 trustee

Disposition: Granted

Order: Prepared by the movant, approved by the trustee

Subject: Amended Chapter 13 Plan, filed September 7, 2021

Debtor moves for confirmation of his Amended Chapter 13 Plan. The chapter 13 trustee has filed non-opposition to the motion.

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).

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.

32. [21-22486](#)-A-13 **IN RE: ANNA MURPHY**
[DPC-2](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
9-27-2021 [\[50\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

33. [21-22486](#)-A-13 **IN RE: ANNA MURPHY**
[WSS-2](#)

AMENDED OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
9-22-2021 [\[48\]](#)

PETER MACALUSO/ATTY. FOR DBT.
W. SHUMWAY/ATTY. FOR MV.
RESPONSIVE PLEADING

No Ruling

34. [21-22896](#)-A-13 **IN RE: JEFFREY BRYAN**
[EAT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY NATIONSTAR MORTGAGE LLC
9-30-2021 [\[16\]](#)

MARK SHMORGON/ATTY. FOR DBT.
CASSANDRA RICHEY/ATTY. FOR MV.

No Ruling